88-1612

No.

Supreme Court, U.S.
FILED
MAR 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1989

DANIEL R. HODGE, M.D.
Petitioner,

VS.

WALTER R. KELLY, FREDERICK R. DOWNS, M.D.,
RICHARD LESTER, THOMAS A. COUGHLIN III,
MARIO M. CUOMO, DEPARTMENT OF CORRECTIONAL SERVICES
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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10 pp

QUESTIONS PRESENTED

1. Are judges above the law of the land or should they also be found culpable under 42 U.S.C. §1986 for maliciously or negligently not preventing or stopping blatant or covert wheels and chains of conspiracies, proscribed under 42 U.S.C. §1985 and 18 U.S.C. §241 which are being perpetrated in this case, against a Black man expanding his educational horizons, an important liberty interest, and exercising his contractual rights, a most valuable property interest?

2. Would justice be better served, and the disease of white racism reduced exponentially if there were permanent, independent judicial review and quality assurance committees established, whose professional, non-political members were selected and nominated by Congress and appointed for short terms, perhaps two years, by the U.S. Supreme Court, to routinely and specifically police District and Circuit Court civil rights decisions and thereby prevent and preclude, knee jerk parroting of faulty reasoning, blatant disregard of documentary evidence or other competent facts, and the mis-and/or inapplication of well established law to the facts, particularly as was done in this case?

3. Should pendent jurisdictional state law claims be actually considered as primary federal questions, where the actions of the defendants in this case, such as forgery, fraud, complicity, defamation of professional character, violations of disciplinary rules and ethical considerations, in addition to being derived from a common nucleus of operative facts, are in and of themselves prima facie evidence of constitutional and federal statutory infractions?

4. Should colossal, media-gathering, penalties and compensation for damages be awarded to Black victims prospectively, against the federal and state government, corporations and individuals, as a universal deterrent to the practice of overt and/or covert white racism, that most heinous and reprehensible national scar, which even 200 years after the adoption of our enduring Constitution, and its appen-

dant multiple race-secti-cidal statutes, still precludes our one nation under God from forming that more perfect union, that established justice, that insured domestic tranquility, that promoting of the general welfare and that securing of the blessings of liberty to ourselves and our posterity, because forty acres and a mule are simply not enough?

PARTIES BELOW

The parties to the proceedings below were petitioner Daniel R. Hodge, M.D., plaintiff and plaintiff-appellant, and respondents Walter R. Kelly, Frederick R. Downs, M.D., Richard Lester, Thomas A. Coughlin, III, Mario M. Cuomo, Department of Correctional Services, defendants and defendants-appellees.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Comes now Daniel R. Hodge, M.D., J. D. pro se, petitioner, and respectfully prays that a writ of certiorari be issued to review a summary order of the United States Court of Appeals for the Second Circuit, filed on December 6, 1988, affirming the judgment of the United States District Court for the Western District of New York, that was entered on July 11, 1988, dismissing the action of ***Daniel R. Hodge, M.D. vs. Walter R. Kelly*** et. al., in its entirety.

OPINIONS BELOW

The summary order # 88 - 7657, of the United States Court of Appeals for the Second Circuit, filed December 6, 1988, in the case entitled ***Daniel R. Hodge, M.D., vs. Walter R. Kelly*** et. al., is unpublished, and is reprinted in the Appendix hereto, A 1-2, infra. "A" refers to the Appendix herinafter.

The decision and order of the United States District Court for the Western District of New York, entering summary judgment dismissing the compiaint, on July 11, 1988, is unreported. It is reprinted in the Appendix hereto, A 3-12 , infra.

JURISDICTION

The judgment of the Court of Appeals in ***Daniel R. Hodge, M.D. vs. Walter R. Kelly*** et al., was filed December 6, 1988. This Court has jurisdiction to review that judgment under 28 U.S.C. 1254 (1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

The pertinent texts are listed in the Appendix hereto, A13-17.

STATEMENT OF THE CASE

Petitioner Daniel R. Hodge, M.D., a black physician,[1] employed since August 23, 1983, by the New York State Department of Correctional Services (DOCS) as a clinical physician at the Attica Correctional Facility (ACF) in the town of Attica, in Wyoming

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[1] Petitioner is a Caribbean-American, born April 29, 1944 on the island of St. Martin. At the age of 5, petitioner immigrated to Aruba, went to Dutch school there until his arrival in New York City in May 1957. Petitioner became a very proud U.S. citizen in May 1964.

County, N.Y. The petitioner, who had an excellent employee performance record, decided to attend law school full-time in August 1985. Richard Lester, the Attica Correctional Facility Health Care Manager (FHCM), who had made an unsuccessful attempt at law school[2] embarked on a campaign of work place harassment of the petitioner using multiple bureaucratic schemes and clerical procedures:

(1) He deemed the petitioner (AWOL) absent without leave on August 5, 6, 7, and 8, 1985 instead of on vacation. Petitioner had told the secretary in general terms about a planned two weeks of vacation just prior to entry into law school the first[3] and last week in August 1985. Furthermore, during the well announced, "end of August vacation", taken just a week before the commencement of law school, petitioner was, nevertheless, also deemed by Richard Lester to be AWOL.[4]

(2) Richard Lester also insisted that the petitioner take a half or even a full-time leave of absence "like other employees", rather than allow the petitioner to select, according to the policy and process of the Institutional Practice Plan contract provision, any of three fungible clinics held from approximately 9-11 a.m., 1-3 p.m. and 7-9 p.m., Monday through Friday. See the Institutional Practice Plan Agreement in the Appendix to this petition. A 21-24.

(3) The Attica Facility Health Services Director (FHSD), Dr. Frederick Downs, M.D., had a friendly working relationship with the petitioner during the first two years of petitioner's employment. Even

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[2] Appendix for the Appellant 88-7657, ***Hodge v. Kelly et. al.*** p. 19, 251, 597.

[3] Due to a sudden change of plans, the vacation was moved to the second week, instead of the first week, in August and because of a purely a human slip of memory, the secretary was informed indirectly on August 5, 1985. The incident was blown way out of proportion by Mr. Lester.

[4] In the official employee time record August 5, 6, 7, and 8 and August 19, 20, 21, 22, and 23, 1985, are marked as vacation and petitioner was paid for those days.

though, Dr. Down's had switched his routine clinic schedule **"to accommodate petitioner's law school attendance"**, the gesture was, as it has been now learned, purely cosmetic and a ceremonial beau geste.[5]

A major controversy developed with regard to on-site time requirements of the Institutional Practice Plan (IPP). The Institutional Practice Plan utilized a rationale for the distribution of physician's hours whereby the physician developed his own routine weekly schedule, at least in theory, being able to select any of the three fungible clinics. A full-time 40 hour-week is divided into 30 hours of on-site or **direct patient care** activity with the 10 remaining hours devoted to non-patient care activities. (see Section C of IPP) A 22.

Typically, the on-site, **direct patient care** takes place during, and is for security reasons limited to, an approximately 2-3 hour time period in each clinic, whether in the morning, afternoon or evening. During the remaining on-site time of approximately 2 hours, there is **no direct patient care** activity. The physician remains on-site reading, solely to "fulfill" the on-site requirement of the (IPP).[6]

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[5] There is no difference in the **class of patients** being seen in any of the three **fungible** clinics. Furthermore, presently there is one physician attending the morning and two physicians attending the afternoon clinics simultaneously. The evening clinic which was covered by a physician's assistant is no longer scheduled since the physician's assistant relocated to another facility. It is because the evening physician's assistant relocated, **not because of management having first made the decision to terminate evening clinics**, that there is presently no evening clinic being conducted. The evening clinic is not preferred by any physician or physician's assistant. Logically, management should have rejoiced that the petitioner wanted to work evenings.

[6] The gravamen of petitioner's complaint was that this on site, no direct patient care or **"non-patient contact time"** as well as **"the right to select any of the three fungible clinics"** could be used, in a very ordinary way, to develop petitioner's own routine weekly clinic schedule in tandem with

At the height of this clinic scheduling controversy, the Assistant Commissioner for Health Services, Dr. Raymond Broaddus, Phd., a Black person, was called in from the Department of Correctional Services (DOCS) central office in Albany, N.Y., to help resolve the dilemma as he described in a November 27, 1986 memo "to discuss available options which would take into consideration your personal needs while simultaneously remaining within the parameters and guidelines established by the Department [DOCS] for [an] acceptable work week for a full-time physician." (Appendix for the Appellant 88-7657 p. 167)

But the **"singular purpose"** of the Assistant Commissioner's visit in November of 1985, "did not result in a collaborative decision leading to an Institutional Practice Plan that would serve the best interests of the Department, the facility and yourself." Id.

Moreover, Dr. Broaddus refused to acknowledge or accept that tensions had polarized around a **"singular aim"**, i.e., prevent law school attendance by the petitioner at any cost. Unfortunately, Dr. Broaddus had already switched alliances, by the time he had hard evidence of the validity of the **presumption** that the "local management team" (Richard Lester, Dr. Downs and Superintendent Kelly) wanted to preclude petitioner's law school attendance altogether, and to accomplish by fiat what they could not discourage, impede, nor thwart.[7]

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petitioner's law school and various hospital emergency room commitments, an objective clearly possible and attainable within the IPP guidelines for an acceptable work week.

[7] On Valentines Day, Friday, February 14, 1986, the Superintendent at the Attica Correctional Facility Walter R. Kelly abruptly, and in violation of the Public Employees Federation Agreement, created a new totally redundant, arrogated, 10:00 a.m. to 4:00 p.m., Monday through Friday, routine clinic schedule, effective as of the very next scheduled clinic on February 18, 1986. It encompassed time intervals spanning part of the

The petitioner took several days off, calling in each day at 8:00 a.m. for various leave entitlements [personal, vacation and sick] which are accumulated and used in accordance with attendance rules and under the provisions of Article 12 of the Public Employees Federation (P.E.F.) Agreement A 25 with the State of New York. The petitioner was deemed AWOL February 18, 19, 20, and 21, 1986. Petitioner's regularly scheduled days off were Saturday and Sunday, February 22, and 23, 1986 and petitioner called in on February 24, 25 and 26, 1986. The petitioner was deemed AWOL on the 24 and 26th but the official employee record lists an entry of "S" on February 25, 1986, for personal illness.

On February 19, 1986, petitioner had filed a suit in the Federal District Court for the Western District of New York before Judge John T. Curtin, alleging racial discrimination under 42 U.S.C. §2000e et. seq and §1983, and contract violation. Petitioner sought a temporary restraining order and a preliminary injunction to prevent the local management team at Attica Prison from arrogating a routine clinic schedule designed to preclude law school attendance completely.[8]

On March 3, 1986, in retaliation for filing the federal claim, the Department of Correctional Services (DOCS) suspended the petitioner without pay, alleging, inter alia, petitioner's "interference with facility operations" as a "just cause" for the suspension and seeking a penalty of dismissal from service because of insubordination in not

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direct patient care morning clinic 9-11 a.m., the **non-patient contact time** between 11:00 a.m. and 1:00 p.m., another **direct patient care** interval between 1:00 p.m. and 3:00 p.m., and finally a **non-patient contact time** between 3:00 p.m. and 4:00 p.m.; the motive was so blatantly obvious.

[8] The District Court denied the relief sought, finding no irreparable harm nor a likelihood of success on the merits. Petitioner voluntarily withdrew the claim.

"signing a new IPP" and "unsatisfactory attendance practices," all occurring *after* the arrogated switch in petitioner's routine clinic work schedule from 10:00 a.m. to 4:00 p.m., Monday through Friday.[9]

On March 26, 1986, Assistant Attorney General, William D. Maldovan, Esq., of counsel to New York State Attorney General Robert Abrams and attorney for the DOCS, provided an affidavit, A 47-49 **"at the request"** of First Deputy Superintendent of Attica Correctional Facility, Frederick N. Richardson, a Black man. The more likely scenario is that Richardson was **"requested to request"** the Maldovan affidavit, in which according to Maldovan, "It was my understanding that the affidavit was to be used to verify (in violation of Disciplinary Rule DR 5-102: Not withdrawing as counsel when the attorney becomes a witness [A 20]) plaintiff's [meaning this petitioner's] whereabouts on February 26, 1986 in connection with a disciplinary proceeding against plaintiff pursuant to the provisions of the collective bargaining agreement between the State of New York and the Public Employees Federation." [10]

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[9] Said (DOCS) Bureau of Labor Relations Director, Kevin Breen, in the March 7, 1986 Notice of Discipline, the penalty being exacted was justifiable because, "we note that your continued failure to report for duty as scheduled caused apprehension and unrest in those inmates that had been assembled (even though, testimony at arbitration revealed that management knew fully well that the petitioner called in each day, and that it was as a result of management's precipitous actions in precluding petitioner's law school attendance, that petitioner was calling) to receive medical care, creating potentially dangerous situations. (even though the Facility Health Services Director, Dr. Downs was on-site each and every day that the petitioner called in). Further, as there are only two physicians distributing health care services to over 2000 inmates, and any disruption in that schedule greatly impacts on the quality and quantity of health care received by those inmates." (It was a purely self-made, management-created clinical health care "crisis" in the first place).

[10] The affidavit was used not in connection with any Public Employees Federation provisions, but instead with the Department of Correctional Services Employee Manual Rules section 26.5, sick leave, and section 3.4, falsification of records. Section 3.4 provides: No employee

The obvious objective of the concerted and overt act of preparing and executing the Maldovan affidavit was to synthesize both **"a falsification of an official report or statement"** and an **"unsatisfactory attendance practice charge"** against the petitioner and as a result cause the petitioner substantial harm, i.e., dismissal from service, 18 U.S.C. §241-2 and the lost of a considerable property interest worth about $2 million over twenty years, not just a gold watch or a color TV, crimes for which many inmates in Attica are doing much time. Continued Maldovan, "... the specific disciplinary charge against plaintiff involving his appearances in Court on February 26, 1986 was not sustained by the arbitrator and he was not disciplined as a result of his activities on that day." [11]

Before the suspension without pay from Attica, the petitioner had been working at Attica Correctional Facility full-time, going to law school full-time[12], and working on weekends at Tri-County Memorial Hospital Emergency Room as an secondary independent contractor by way of Stat Services Inc., which paid the petitioner directly under a 1099 arrangement, and which was the primary contractor providing emergency services to Tri-County Memorial Hospital.

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shall knowingly make a false official report or statement, orally or in writing, or make, maintain or cause or permit to be made, a false record or false entry in official records.

[11] That, of course, is totally irrelevant to the issue of Maldovan having further violated Disciplinary Rule DR 7-102: Representing a client within the bounds of the law, specifically (A) (4), (6) and (7).
A(4): Knowingly use perjured testimony or false evidence.
A(6): Participate in the creation or presentation of evidence when he knows or it is obvious that the evidence is false.
A(7): Counsel or assist his client in conduct that a lawyer knows to be illegal or fraudulent. (see A 18-20 for other substantive Disciplinary Rules violations as well).

[12] Petitioner completed 87 credits at the State University of New York at Buffalo Law School by August 1988, when only 84 are required for the J.D. degree. Petitioner rarely attended classes after the Attica Clinic

After suspension, the petitioner added two other hospitals to the pool where he could market his Emergency Service skill: Lake Shore Hospital, in Silver Springs, N.Y., also a primary contractor-client of Stat Services, Inc., and Buffalo Columbus Hospital which considered emergency physicians as direct employees.

Long before the malpractice health care dilemma had surfaced, this petitioner had been going upstream and against the tide of empty "window dressing" public health policies of hospitals, administrators, nurses and certain "managerial" physicians.[13]

On January 20, 1987, the petitioner was reinstated at Attica Correctional Facility, post-arbitration with a four-month back-pay award and a six-month loss-of-pay penalty, for not having filled out a bureaucratic form in advance, formally requesting time off for personal and vacation leave during the abruptly imposed, arbitrary and capricious

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schedule switch and suspension without pay and was subsequently penalized by certain professors with so-called "D" grades, only 12 credits of which can be used towards the J.D. degree. One such "D" grade was given for a term paper of a Play Skool simulated asbestos/mesothelioma case, where this petitioner, as counsel for the defendant ***Dusty, Inc.*** was able to get ***Dusty*** off the hook, Scot-free, by showing that the plaintiff in this industry-wide, John Manville type case, was a heavy smoker who really died from a bronchogenic carcinoma and not his mesothelioma, of which there are two types: diffuse and localized. The latter is curable by excision, the former is uniformly fatal. The plaintiff, of course, had the localized type, as the Play Skool autopsy report proved, not by a preponderance of evidence, but beyond even an ***unreasonable*** doubt. Who in this class of 26 would be aware of these specificities and niceties of ***scientific substantive due process:*** Daniel R. Hodge, M.D., of course! That could undermine the security blanket of any pedant! Reasons for the "D" grade: non-attendance and not submitting a **"notice of motion"** and a **"supporting affidavit"**, a routine after three years of pro se litigating, which is too mundane to ponder, let alone address as being a substantive reason for a "D" grade. And the rocket's red glare...gave proof through the night...that petty pretextual, aristocratic white racism is still here...

[13] See petitioner's ***Personal Statement*** made on application to Law School A 27-31 for a cogent description and account of myriad medico-legal challenges facing our present civilization and future generations.

routine clinic work schedule change that had been designed to completely preclude law school attendance altogether. The petitioner then declared war on **Institutionalized White Racism** in a document entitled ***Hodge-is-Back,*** (See Appendix for the Appellant 88-7657, Page 264 to 273), wherein the petitioner proclaimed that, **"Attica, home of the World's worst prisoners, is now also the arena of the World's most vicious racists."**

Demand was made for the resignation of Kelly, Downs and Lester, because they were criminal co-conspirators, who prepared a forged unsatisfactory employee performance evaluation of the petitioner. Id. at Page 192-194. The forged document, for which no **best evidence original** can be found, was placed before the arbitrator by Ed Mickle, a New York State Bureau of Labor Relations representative under the directions of his Director, Kevin Breen. Arbitrator Fred L. Denson in his opinion and award of December 30, 1986 found that there was a ***presumption*** that the newly arrogated 10:00 a.m. to 4:00 p.m. Monday through Friday, routine weekly clinic work schedule that had been implemented and that was capriciously and arbitrarily imposed, in a disparate manner, on the petitioner, was for the purpose of disciplining petitioner, for not providing an "acceptable" IPP and an "acceptable" routine weekly clinic schedule. According to the arbitrator there was insufficient evidence to rebut that presumption, created by Kelly's letter of February 14, 1986 and Breen's Notice of Discipline of March 7, 1986.

On February 11, 1987, Kelly again, in stark violation of the **Institutional Practice Plan** guidelines and despite the arbitrator's most forceful directive to cease and desist from imposing discipline unless pursuant to the provisions of Section 33.5 of the Public Employees Federation Agreement, ordered the petitioner to follow the same arrogated 10:00 a.m. - 4:00 p.m., Monday through Friday, routine weekly clinic schedule starting March 16, 1987. Petitioner prepared a second federal court action to be served on that day.

The present arbitrator, Steven Goldsmith, was also prompted to

warn Dr. Downs, to be cogent and responsive, when Dr. Downs' evasive tactics during the current arbitration proceeding on February 7, 1989, only further strengthened the **presumption** that management's preclusion of the petitioner from being able to select the fungible evening clinic and management's abrupt imposition of an arrogated routine clinic schedule from 10:00 AM to 4:00 PM Monday - Friday was arbitrary and capricious.

Dr. Downs tried to justify his preclusion of the petitioner from the evening clinic by pretextually creating a **highly suspect** and most obviously **artificial categorization** of patients into **"standard non-emergency"** daytime only and **"less emergent"** evening only patients. [14]

The classifications were conjured up by Assistant Attorney General William D. Maldovan, Esq., under color of law and in a racist conspiracy with Kelly, Downs, Lester and the Central Albany liberals, but those clinic classifications and distinctions are fraudulent, having no clinical merit whatsoever and most certainly bore no rational or even remote relationship to a permissible or reasonable management or state objective, and as such, were and are arbitrary, capricious and unconstitutional. Said arbitrator Steven Goldsmith to Dr. Downs:

> I'm directing this to you doctor - - - Arbitrator Densen found in the last arbitration that the actions that were taken by the facility in not changing the grievant's hours - Dr. Hodge's hours to accommodate him presumptively, are presumptive proof of

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[14] ***Village of Arlington Heights v. Metropolitan Housing Development Corp.***, 429 U.S. 252 (1977), held that circumstantial and direct evidence of invidious discriminatory intent and purpose can be proved by departures from normal procedures or factors usually considered important by a decision maker; In ***Griggs v. Duke Power Co.***, 401 U.S. 424 (1971), the employer has the burden of showing that a job requirement has a demonstrable relationship to successful job performance; In ***Robinson v. Lorillard Corp.***, 444 F. 2d 791 *cert. dismissed*, 404 U.S. 1006 (1971) there must exist an overriding legitimate business purpose such that a requirement or practice is necessary to the safe and efficient operation of the business.

harassment - - - and it may very well be that I'm gonna apply the same tests to what happened here as arbitrator Denson found applicable - - -in which case, I'm putting you on notice that if there were good reasons that you turned him down or you said, "you can't come in at 3:00 o'clock" - - - if there were good reasons for that, you better tell me about it; you better make sure it gets on the record and - - - don't dodge the questions — but give answers that - - - such as you have them, which are gonna bear on that point.

On March 2, 1987, at around 2:00 p.m. an inmate was found fibrillating in or near his cell and was brought to the prison infirmary, without any cardio-pulmonary resuscitation (CPR) being done by corrections officers on the way, a trip that takes at least 5 minutes. The petitioner made a ***well experienced*** and ***informed judgment,*** that:

(a) absent a defibrillator, the only definitive treatment for ventricular fibrillation, [shock the heart back to a normal rhythm]

(b) absent a stylette, a wire used to accomplish intubation [placing a tube in the "windpipe"],

(c) absent appropriate cardiac medications, logistically dispensable,

(d) absent an even minimally trained team, who were ungloved, unprotected in a prison population with an increased likelihood of contracting AIDs from body fluids during Advanced Cardiac Life Support or other such procedures,

(e) after having documented that the inmate was fibrillating for 5-10 minutes,

(f) the response time of a paramedic ambulance, having a defibrillator [even if available] was routinely more than 30 minutes away,

(g) **making a "no-go", challenger-like decision was imperative** because the costs and potential dangers to the staff rescuers, lopsidedly outweighed the potentially minimal or no benefit accruable to the inmate, in that setting and under those sets of facts and circumstances. The petitioner firmly stands behind that decision, which was prescient, (see **Morbidity and Mortality**

Weekly, August 21, 1987, Vol. 36, 2S Pages 6S and 12S), which no ***scientific due process*** can reverse.

On March 16, 1987, petitioner was placed on administrative leave with pay [15] and then suspended without pay [16] on November 6, 1987.

The **"failure to initiate appropriate life support"** charge has been under arbitration for almost a year. It originally was conducted by counsel for petitioner. But in order to develop a record of ***scientific substantive due process*** for review, the petitioner was forced to handle the matter pro se. Few doctors, let alone lawyers understand the intricacies of these esoteric and hypertechnical issues. There is much room for **distortion of the findings of fact** made, even from documentary evidence, if witnesses and persons either prosecuting or reviewing the case are motivated by malice, vindictiveness, intolerance, prejudice, ignorance or jealousy .

The documentary facts in this case reveal that a whole legion of white people, four attorneys, two commissioners, one attorney general, one governor, and the most heinous **national disgrace**, seven

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[15] and "assigned to your house" reminiscent of a Napoleonic detention on Elba and St. Helene, "during your normal working hours of 10:00 a.m. - 4:00 p.m., Monday through Friday. We will periodically be in contact with you via telephone during these hours."

[16]...we shall implement the following penalty: Dismissal from Service. The reasons for this discipline are:
Misconduct in that you violated Section 2.1 and 2.2 of the Employees' Manual.
Section 2.1 provides: Personal conduct. No employee, whether on or off duty, shall so comport himself as to reflect discredit upon the Department or its personnel.
Section 2.2. provides: Lawful comportment. An employee shall not knowingly or willingly violate any law or ordinance of the United States or the State of New York or any rule, regulation or directive of the Department [of Correctional Services].
The disciplinary charge further states: . . . you failed to initiate appropriate life support measures on an inmate. In addition, you refused to allow nursing staff present at the time to initiate appropriate life support measures on the inmate.

"northern liberal federal judges" in one way or another whether by commission or omission, allowed or caused harm to befall one Black man striving to exercise his constitutional rights, to protect his **Property and Liberty Interest**, and to become all that he could be in this the Land of the truly **Free**, and the Home of the really **Brave**.

There is a disease epidemically rampant in our land: White racism, the most symptomatic finding is that the **magnetic kinship of white skin is far stronger than respect for law.** No one, ***including judges***, is immune from the reaches of our enduring Constitution and laws! It is upon that sharply focused issue with regard to 42 USC §§1981, 1983, 1985 and 1986 that this petitioner has standing to request that this Court grant his petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION FOR A WRIT OF CERTIORARI

This Court should grant this petition for a writ of certiorari because this case presents this Court with a template and the golden opportunity to simultaneously **accomplish six very important objectives,** which would dramatically improve our system of justice and ordered liberty:

(1) by guaranteeing the fairness, validity and precision of Circuit and District judicial opinions across the nation,

(2) by preventing rubber-stamping, parroting and abuse of judicial power, not to mention discretion, because in the future there would be totally independent, non-collusive, professional reviewing of the judiciary branch,

(3) by declaring open war on white supremacy and its heinous and reprehensible progeny: **Institutionalized White Racism.** Mississippi Burning! Howard Beach Burning! "Liberal" New York State, the most racist State in the Union, must be burned in this Court! Burning! Hallelujah! Burning!

(4) by reducing the work load of this Court, particularly where

issues, as here, concern well established law and involve competent documentary evidence which fulfill every element of, and under multiple race-secti-cidal statutes: 42 U.S.C. §§1981, 1983, 1985, 1986, 1988, 2000e et. seq., 18 U.S.C. §241-2.

(5) by promoting real justice, in out-of-court settlements and decreasing the need for appeals and rehearings, because counsels will know beyond a doubt that once the elements of an invoked claim are fulfilled, **judgment as a matter of law is guaranteed** with the precision of a laser, in any federal or state court, from sea to shining sea,

(6) by fostering a genuine measure of hope for the aggrieved, that indeed justice is attainable where it should be: At the level of the trial court, in keeping with **F.R.C.P. Rule number one!**

The writ of certiorari this petition seeks should issue so that this Court may render an **authoritative decision** and a **powerful declaratory statement** with regard to certifying the dire need to achieve those six objectives and to streamline and improve our system of justice and ordered liberty, and particularly the urgent need that our nation has thrust upon it, as we enter a new century, to uplift the personal prestige and the quality of Black social standing, immediately and for future generations of Black Americans.

It is totally intolerable to continue, even 200 years after the adoption of our Constitution and 125 years after the abolition of slavery, to degrade the endowments of both body and mind, of any American, and more cogently to the issues being raised in this petition, particularly Black Americans, or any person anywhere on this globe. Why is being white still better and more "prestigious?" Why is even a Black doctor/lawyer, who clearly is more educated than 245 million odd Americans of any color, still being degraded, tortured and denied even the most basic constitutional rights and treated as inferior? In what way is he inferior? Or is it the fact that he in his Blackness and quest for educational achievement has undermined the doctrine of Jefferson: white supremacy.

If indeed, **we the people** want to Form that More Perfect Union, **that idyllic cohesion of our compatriots,** can never be attained, as long as the malignant cancer of white racism, indeed any racism, permeates the interstitial fabric, the matrix and cement of our constitutional federalism.

If **we the people** want to Establish that Justice, right here at home which we talk and boast about around the world, we can never do so when the multiple judicial atrocities committed in this case, in perpetual torment of this Black petitioner, continue to demonstrate unwavering support for the heinously infectious disease of white supremacy and its reprehensible progeny, Institutionalized White Racism, that national disgrace and eyesore, which undermines our credibility when we try to promote democratic ideals around the World: Our words don't match our deeds.

If **we the people** want to Insure that Domestic Tranquility which has eluded us for more than two centuries now, we can never achieve that peaceful bliss of brotherhood when neither of the three branches of our government, Executive, Legislative or Judiciary, place the eradication of the disease of white racism at the helm of our national objectives: No more cover-ups, no more excuses, it is not a minor social menace. It is a fatal cancer to Black achievement indeed, any citizen's achievement.

If indeed, **we the people** want to secure the Blessings of Liberty[17] to ourselves and our posterity, we can never achieve that noble goal, when a full 25-30 million of our Black citizens, have never known and can never know the true meaning of a Liberty Interest in their self-

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[17] In ***Allgeyer v. Louisiana,*** 165 U.S. 578 (1897), Justice Peckham had written for the Court: The "liberty" mentioned in [the Fourteenth Amendment] means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his facilities; to be free to use them in all lawful ways; to live and work

esteem and their personal reputation,[18] because their physical endowments are automatic labels of inferiority and their at once across the board, social, political and economic underachievement is alleged and held to be "a priori proof" of Black inferior mental endowments: There is definitely something wrong America, when a Black doctor/lawyer, even in 1989 cannot find refuge against white racism in the bosom of our enduring Constitution. It is no mere accident of fate. There is definitely something wrong, when a Black man, struggles to become a doctor, then on the lonely road to becoming a lawyer as well, he also has to vehemently battle **Institutionalized White Racism,** in multiple departments of the State and Federal government, to wit,

The New York State Departments of:

(1) Correctional Services (Coughlin)
(2) Law (Abrams)
(3) Health (Axelrod)
(4) The Executive Department (Cuomo) [see "Cuomo's Affidavit " and correspondence A 40-46], and the Federal Courts:
(1) District (Curtin)
(2) Circuit (Mahoney, Winter, Metzer) and (Feinberg, Meskill, Pierce).

That achievement of embracing the two top professions in this nation, undermines the Doctrine of Jefferson: white supremacy.[19] The convenient fiction of white supremacy, being endemic to white skin,

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where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.

[18] "The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty." ***Rosenblatt v. Baer***, 383 U.S. 75 (1966)

[19] "I advance it therefore, as a suspicion only, that the Blacks, whether originally from a distinct race, or made distinct by time and circum-

is no secret to the white or Black world. All the white men involved in this Black petitioner's struggle to the top of the educational ladder, are less educated than this Black petitioner.

All of these white men have made public declarations and statements which would easily mislead the world into believing that they are men of goodwill, enlightened and intellectually honest. But these men, seven of them being Federal Judges,[20] are very insecure vestigial white supremacists hiding like wolves, in sheep's clothing under the "white liberal" shield. They had no intentions in keeping with the dictates of the **First, Fifth, and Fourteenth Amendments,** of

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stances are inferior to the whites, in the endowments both of body and mind." [**Notes on Virginia**]. Justice Harlan, dissenting in ***Plessy v. Ferguson,*** 163 U.S. 537 (1896) said, "The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power."

[20] Even the Chief Judge of the Second Circuit, Feinberg, (and his brothers Meskill and Pierce) who should clearly know better, dismissed the ***Hodge-v-Lake Shore Hospital, et. al.*** appeal, as being premature, when only the ministerial act of entry of a judgment of an already dismissed action remained. "Liberal" Judge Feinberg, ignored ***Gillespie v United States Steel Corp.***, 379 U.S. 148, Cert. U.S. Ct. of Appls. 6th Cir. (1964), where it was held that a **final decision** does not necessarily mean the **last order possible** to be made in the case but rather is a practical decision arrived at by a balancing of the competing interests. (See also ***Sears, Roebuck & Co. v. Mackey***, 351 U.S. 427 (1956); ***Cohen v. Beneficial Industrial Loan Corp.***, 337 U.S. 541 (1949)). The only interest the Lake Shore Hospital racists and their racist counsels and racist Judge Curtin had to balance was whether or not to unjustly deny this petitioner summary judgment and to then punish him and procedurally derail the case, under color of law and in a white racist conspiracy to deny even appeal for more than a year now. It is a National Disgrace! The innovative way in which petitioner tried under U.S. Supreme Court Rule 19.4 to merge ***Hodge v. Lake Shore*** with ***Hodge v. Kelly*** , never got past this Court's Deputy Clerk, Mr. Vasil, or Assistant Clerk, Ms. Ruffin.

This petitioner feels that all federal judges should be paid the same salary as Vice President James Danforth Quayle, even if we have to scrap several B1 bombers and a few nuclear subs to do so. But judges

protecting a Black doctor's constitutionally guaranteed Property interest in his continued employment and his Liberty interest in his reputation, and his right to acquire useful knowledge, ***Meyer v. Nebraska***, 262 U.S. 390 (1923), i.e., like becoming a lawyer as well or **the next president of the United States**, if that were his ambition! Instead these Judges shielded white racist tortfeasors, who blatantly conspired to destroy this Black doctor's constitutionally protected Property and Liberty interests.

These Judges are themselves guilty of knowing about this racist conspiracy to deprive a Black citizen of his constitutional rights and maliciously not stopping it or at the very least, neglecting to prevent it, under 42 U.S.C. §1986, by rubber-stamping and parroting the racist District Court decisions in ***Hodge-v-Kelly , et. al.*** and ***Hodge-v-Lake Shore Hospital Inc., et. al.***

In fact, these "liberal judges" joined in the racist jamboree. Nevertheless, Chief Justice Rehnquist, who has admirably indeed, come a long way and who has learned so well to recognize pretextual racism under the retaliatory liberal guise, since the fall-out generated from his dissenting opinions in ***McDonald v. Santa Fe Trail Transportation Co.***, 427 U.S. 276 (1976) and ***Runyon v. McCrary***, 427 U.S. 160 (1976,), inter alia, and particularly since the liberal smudging of his personal reputation on the racial restrictive deed covenant,

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their job within the bounds of the law including 42 U.S.C §1986 and 18 U.S.C. §241; failing that they should be forced to resign instead of being allowed to perpetuate white supremacy and Institutional White Racism: The incidents and badges of slavery.

In Red Square, this petitioner hopes to strike up a gentlemen's agreement with Mr. Gorbachev, with regard to racism and world peace [the two are inextricably linked], so that after beating out Quayle for the party's nomination in 1996. . .one hundred years after ***Plessy***, (see footnote 19) under the campaign theme of **...read my thick lips. . .No Nuclear Weapons. . .that that goal could be achieved by our nation's first Black president.** [an Amendment to make our country's adoptive sons and daughters, fully equal, legal members of the family, including eligibility to become president, is now appropriate].

confirmation-impeding issue, should have been alowed to review this Black petitioner's innovative race-secti-cidal merger of ***Hodge v. Kelly*** et. al. and ***Hodge v. Lake Shore Hospital*** et. al.

The grounds for the U. S. Supreme Court Rule 19.4 merger is, that there was severe abuse of judicial power cognizable to the U. S. Supreme Court Rule 17.1 (a), where the liberal District and Circuit Court Judges ***themselves*** pretextually joined in an on going racist conspiracy, under color of ***substantive and procedural*** law violations of 42 U.S.C. §§1983, 1985 and F.R.C.P. Rule 1, inter alia, not to mention their culpability under 42 U.S.C §1986, one of the questions presented and the very reason this petitioner seeks this writ of certiorari.

Does there exist a **"judicial privilege"** analogous to the proffered Nixon **"absolute executive privilege of confidentiality"**, which permits judges themselves not to have to abide by the United States Constitution and laws? In his oral argument before the Second Circuit Court Judges Winter and Mahoney and District Judge Metzner, this Black petitioner literally begged these white men to place the disease of **white supremacy** and its heinous progeny, **Institutionalized White Racism**, on the ***ash heap of history!***

In essence, there this Black doctor/lawyer, petitioner, fully more educated than 245 odd million other Americans white or Black, stood in a court room of wall-to-wall white brothers and sisters, asking three supposedly wise, white men to commit psychological suicide: they had before them hard evidence that white supremacy is a malignant farce! Down came-a-tumbling the symbolic white racist walls of Jericho!

Had these three white men been enlightened and truly brave Americans, they would have acted in the spirit of an Abraham Lincoln or a John Kennedy and recognized the national urgency of making a prudent decision: Supplant the usual and "accepted" course of federal judicial proceedings with regard to the denunciation of white suprem-

acy and **Institutionalized White Racism**. Send, instead a message across the Land that white supremacy and **Institutionalized White Racism** will never be further tolerated! (see ***"Bush Affidavit"*** A 36-38 para. 6 & 7).

No, these judges instead, rubber-stamped blatant overt and covert **Institutionalized White Racism.** These judges have failed their country and abrogated their promise to uphold our enduring Constitution, Article VI cl. 3 A 13. They in fact have **themselves blatantly violated** that enduring Constitution. They are cowards, who are not above the Law of the Land and who **are guilty,** at the very least, of violating 42 U.S.C. §1986. They cannot claim judicial immunity from that federal statute.[21]

This Black, brave and brilliant American, has standing to, and now calls on the Supreme Court of the United States of America, in an unprecedented fashion to exercise its mighty power of supervision and proclamation to rebuke these judges. Sound the clarion Bell of Liberty all over this Land of the Free, to Herald the Beginning of the End of white supremacy and its heinous and reprehensible progeny:

Institutionalized White Racism!

See *The Peter Zenger Press* for the latest Old News
from the Battle Fields of White Supremacy [A 56-68]

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[21] Judge John T. Curtin has in addition to violating 42 U.S.C. §§1983, 1985, and 1986 also blatantly violated Federal Rules of Civil Procedure, *Rule One:* By, delaying the ministerial act of entry of judgment in ***Hodge v. Lake Shore Hospital*** for more than a year and he has no intentions ever of entering judgment, on the case, so as to make appeal "impossible." Nobody is above that Constitution: Neither Richard Nixon nor Olie North nor John Curtin nor Mario Cuomo. Nobody but Nobody is above that Constitution or immune from its reaches, ***Ex Parte Young,*** 209 U.S. 123 (1908). The ***Lake Shore Hospital*** matter was severed from the petition of March 6, 1989 and the mandamus route to justice is now "burning in New York."

1. As A Nation We Subscribe To The Proposition That Nobody Is Above The Law, Which Most Emphatically Includes The President, Congressional Members And ... Judges!

Throughout our national history, it has been declared, re-affirmed, proclaimed and shouted from every mountain top and across our spacious skies, from sea to shinning sea, that our enduring Constitution is the "Supreme Law of the Land."

In ***Cooper-v-Aaron,*** 358 U.S. 1 (1958), the impliable governor and legislature of the State of Arkansas, had attempted to prevent the Little Rock School Board from carrying out a desegregation order of the Federal Court. The Arkansas executive and legislative branches proffered that the Supreme Court's holding in ***Brown-v-Board of Education,*** 347 U.S. 483 (1954) was not binding upon them.

This Court responded in the most sweeping terms in an opinion signed by each of the nine justices:

> "It is necessary only to recall some basic constitutional propositions which are settled doctrine. Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of ***Marbury v. Madison,*** 1 Cranch 137, 177, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the ***Brown*** case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the

Constitution or Laws of any State to the Contrary notwithstanding." Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3, "to support this Constitution."

Presidents have challenged the finality of Supreme Court holdings or have argued that with such conclusive authority that the judiciary would be too powerful. In a letter to Abigail Adams, Thomas Jefferson exclaimed:

"But the opinion which gives to the judges the right to decide what laws are constitutional, and what not, not only for themselves in their own sphere of action, but for the Legislature and Executive also, in their spheres, would make the judiciary a despotic branch." [VIII ***Writings of Thomas Jefferson*** 310-311 (Ford ed. 1897)]

The buck must stop somewhere, and power whether wisely intended or improvidently applied has the potential for abuse. In ***Martin v. Hunter's Lessee,*** 14 U.S. (1 Wheat.) 304 (1816) Justice Story said:

"It is always a doubtful course, to argue against the use or existence of a power, from the possibility of its abuse....From the very nature of things, the absolute right of decision, in the last resort, must rest somewhere — whenever it is vested it is susceptible of abuse."

In his message of July 10, 1832, vetoing the bill to recharter the Bank of the United States, President Andrew Jackson stated:

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court [in ***McCulloch v. Maryland***, 17 U.S. (4 Wheat.) 316 (1819)]. To this conclusion I can not assent....The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the

> Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it ***as he understands it,*** and not as it is understood by others. (emphasis added) [II ***Messages and Papers of the Presidents*** 576, 581-582 (Richardson ed. 1897)]

President Nixon's widely acclaimed wisdom in his "Re-Open Door" policy on China was sadly tarnished by his abuse of power in "Water Gate". Certain situations classified as "national security" and "a threat to internal peace and order, of significant magnitude" enables the President directly or indirectly to carry out an illegal act, he reasoned. [From ***Transcript of Frost-Nixon Interview,*** New York Times, May 20, 1977, section A p.16]

President Nixon interpreted the Constitution as providing an "absolute privilege of confidentiality" for all presidential communications. This Court, of course, had the final word as to what lies within the boundaries of that not so absolute executive privilege.

If the legal matrix upon which we structure our laws is ab initio faulty, then the effectual operation and remedy intended to be given will similarly be faulty. In computer lingo it is termed garbage in, garbage out. No citizen today should blame our hardware, i.e., the tripartite American governmental power structure or our master program, that enduring Constitution, for an unjust outcome to a controversy. That miraculous document was designed, with our posterity very much in mind. The document is prescient in the sense that it was structured to handle human problems.

This petitioner doctor/lawyer has examined that enduring 200 year old, senior citizen that we call our Constitution and declares that it has a clean bill of health and is getting better every day. It's getting to be more perfect and "more sweeter." The document can quite readily and appropriately handle our multiple social, political and economic problems or any exigency that might arise, in the estimation of this pe-

titioner, for as long as the human genome shall exists. It needs only one source of fuel for its empowerment and proper operation: the goodwill of most of the citizens under its jurisdiction.

Congressional enactments are, as a matter of course, reviewable by this Court. But certain constitutionally derived Congressional authority, as was noted in ***Baker-v-Carr***, 369 U.S. 186 (1962), is judicially unreviewable ordinarily because of the separation of powers within the Federal Government: It is within the sphere of a "textually demonstrable constitutional commitment of the issue to a co-ordinate political department." That, of course, is a most polite, political way for this Court to concede that it must, at times say to itself "hands off".

Nevertheless, deciding the scope of that constitutional commitment is however in the province of this Court. In ***Powell v. McCormack***, 395 U.S. 486 (1969), this Court held that the House had exceeded its committed authority under Art. I section 5 to exclude, censure and declare Adam Clayton Powell's seat vacant even though he met the standing qualifications of Art. I, section 2. The issue of justiciability of the matter was resolved for the first time by this Court; jurisdiction to decide that issue was academic.

On The Great Battle Field At Gettysburg, *Black Corporal Bondage* And The Preservation Of That More Perfect Union Were Then The Burning Issues. On The Constitutional Battle Field At Attica Prison, The Site Of This Petitioner's Riot-For-Freedom, *Black Mental Bondage* , Which Is Synonymous With White Supremacy, And The Annihilation Of Institutionalized White Racism Are Now The Burning Issues.

This Court has the constitutional power and calling, to now make its most forceful Declaration ever, that white supremacy and its heinous and reprehensible progeny, Institutionalized White Racism, will nowhere be tolerated, from the Redwood Forests to the New York island, particularly the New York island.

But a forceful Declaration of Liberty, without severe punishment for infringements upon that Liberty, is like a loud Bark without a Bite: The Bark may scare a few, but the Bite, particularly a vicious Bite, scares every body and the news of deterrence gets around rather quickly.

This Court should make it a **colossally expensive** proposition to infringe on personal Liberty in violation of our enduring Constitution and laws. Imposing heavy fines and penalties for constitutional infractions and for claims arising under the race-secti-cidal statutes is not and could not be perceived as exceeding this Courts authority under any rationale, whether federal common law or measured by the various standards of scrutiny.

There is an **intimately close and substantial relationship** of the disease of white supremacy and the actions of white people against Blacks, whether overtly, or worst yet, covertly implemented. If this Court relegated itself to largely strike symbolic poses and to make grandiose Declarations and then set up only remote standards of enforcement, or "penalties" having little or no effect on the conduct sought to be regulated, then that Declaration is merely an empty Bark.

The immediate treatment of the disease of white racism and the long term management and cure can best be accomplished with **heavy penalties now!** The ends justify the means even under the strictest scrutiny.

This petitioner observes that throughout our constitutional history, unlike the executive and legislative branches, which have on occasion considerably exceeded the authority vested in them by the people, this Court has by comparison, if anything, not exerted the full measure of its authority on a myriad of issues. Virtually every white person would if they knew or does if they know, criticize the Taney Court era as being the darkest hours of our judicial history, no pun intended, because of the slave case holdings in ***Prigg v. Pennsylvania***, 42 U.S. (16 Pet) 536 (1842) and ***Dred Scott v. Sandford***, 60 U.S. (19 How.)

393 (1857). The truth is that those decisions were indeed very constitutional and should not be taken out of context, as they often are by "modern" white liberals and conservatives as well.[22]

The slave article - Art. IV section 2 cl. 3 A 14 was a clause adopted into the Constitution by unanimous consent of the framers; a proof at once of its intrinsic and practical necessity, ***at that time***, regardless of how repugnant to the human conscience. Northerners, then as now, would like to have the world believe that Northern intrinsic whiteness conceptualizations and assertions were less heinous, particularly subdued and more socially acceptable than Southern blatant white supremacy assertions. Those Northern submerged understandings about their whiteness were, then as now, a politico-economic farce: A New England clothing or shoe factory could function profitably with the use of illiterate and semi-skilled poor whites, but picking cotton and planting sugar cane profitably, required only a military command with the threat of a severe beating hanging over the head of a slave.

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[22] Presently there is a guilt-ridden need by our American white brothers and sisters in our socio-economic establishment to distance themselves from our harsh historical realities of slavery and from apartheid (see ***Blacks-for-Bush*** A 32-35 and the ***Bush "Affidavit"*** A 36-38). The practice of slavery in America was most repulsive to a "renaissanced" Europe. The European ruling classes were far advanced, at least in their social perception of the lower class. As enslaved as the lower class whites were due to their economic predicament, they most obviously were infinitely more free as compared to Blacks in bondage in America, and they were not considered to be boilogically inferior.

The laissez faire economic exploitation, the social degradation and the political disenfranchised predicament of poor white people, the archtypical proletariat, were the subjects and issues of the deplorable mid-19th century matrix upon which Karl Marx constructed the ***Communist Manifesto*** in 1845 during the heart of the Taney Court era. ***Priggs*** 1842; ***Dred Scott***, 1857. Europe was by comparison with America, light years away socially and economically but not politically. This petitioner's Law School professor, for constitutional law, the most urbane, Lee Albert, drafter of ***Goldberg v. Kelly***, omitted ***Priggs*** and ***Dred Scott*** from his curriculum, perhaps so as not to offend the liberal northern sensitivities of the students in New York State's only state sponsored law school. It was and is a mistake not to teach our full history. Justice Story, in ***Priggs*** expounded the best example of what the constitutional precept of substantive due process really means in very practical terms.

That same cotton was the raw material for the Northern factories and that sugar cane, the source of molasses for Northern distilleries: the raw materials of slave labor, a turn your head and buy anyway kind of economics. The finished products were the results of poor white labor, and most naturally those products were higher priced, a fact which kept the Southern consumer at a noticeable disadvantage, akin to our present advantage over third world countries. It was all very constitutional economic due process. [23]

2. The Magnetic Kinship Of White Skin In Modern America Is Still Unfortunately Far Stronger Than The Respect For Precepts Of Our Enduring Constitution And Laws.

It is inconceivable to the reasonable mind, how so many white people could in one way or another, knowingly either by commission or omission, concertedly and illegally harm one Black man trying **"to be all that he can become,"** if there were not a conspiracy, fueled by the disease of white racism.

Robert Abrams in his ridiculous brief for the defendant-appellees presented three questions, all of which, from the documentary facts in this case, cognizable to an eight year old child, could be easily answered **yes, yes, yes!** (See A 50-55 for the questions presented by Robert Abrams, Attorney General of the State of New York, and the cogent no nonsense answers of this Black petitioner.)

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[23] It was quite common in the eighteen eighties and nineties to find in the *Nation, Harper's Weekly, The North American Review*, or *The Atlantic Monthly*, Northern liberals and former abolitionists mouthing the shibboleths of white supremacy regarding the Negro's innate inferiority, shiftlessness, and hopeless unfitness for full participation in the white man's civilization. Such expressions doubtless did much to add to the reconciliation of North and South, but they did so at the expense of the Negro. Just as the Negro gained his emancipation and new rights through a falling out between white men, he now stood to lose his rights through the reconciliation of white men. C. Vann Woodward, ***The Strange Career of Jim Crow 6***, (3d rev. ed. 1974)

Just as we perceive quality health care to be synonymous with good doctors and nurses, we similarly perceive justice as being synonymous with good judges and lawyers. There is no question that the quality of health care and of justice, respectively, will be directly dependent upon the quality of the work product of those professionals.

The threat of medical malpractice suits, not the innate goodness of doctors, is more likely the reason for the heightened awareness that physicians have nowadays about the need to maintain high standards of professional performance.

It's time to clean up the legal field which materially needs a whole lot more cleaning up because these professionals write orders for the whole nation not just a relatively few sick people.

Archibald Cox, in his book, Conditions of Independence for the Legal Profession said:

> "The lawyer is loyal to his client, providing a vigorous and fearless presentation of the client's cause. But his zeal for the client is tempered by the lawyer's duties to the court, to adversaries and third persons, and to the public. He is not a mere alter ego, mouth piece, or "hired-gun" of the client, but an independent professional who observes professional standards of integrity, devotion to truth and justice, and respect for broader social values."

Violating disciplinary rules of professional conduct or state laws simultaneously in a conspiracy, whose objective is to deprive anyone of a constitutional right, as four lawyers have done during petitioner's struggle to protect his constitutional rights is not a pendent jurisdictional matter. Because, regardless of how the operative facts of an invoked federal claim are entwined with state law, the classification of one claim as being pendent to the other is academic: Is it a "previously owned" luxury car or is it simply a common "used" car?

We desperately need **judicial Glasnost and Perestroika**, in America, which Mr. Gorbachev can and will complimentarily supply. Judges and lawyers are not mouth pieces or "hired guns" enlisted by the kinship of white skin into the supremacy army, under the confederacy banner of white racism. This petitioner comes before this Court armed with the **most powerful weapon** against tyranny ...any tyranny, particularly racist tyranny, that this world has ever known:

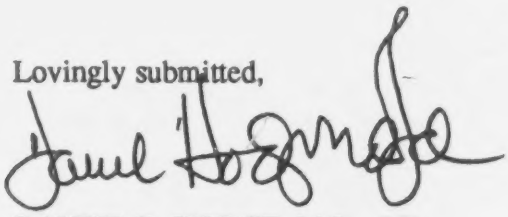
That Enduring
Constitution of the United States of America!
Glory, Glory, Hallelujah!!!

CONCLUSION

For all of the foregoing reasons, this Court should issue the writ of Certiorari this petition seeks.

Dated: Buffalo, New York
March 17, 1989

Lovingly submitted,



DANIEL R. HODGE, M.D., J.D.
Pro Se

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

WDNY
86 CIV 160
C
Curtin

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixth day of December, one thousand nine hundred and eighty-eight..

Present:

Honorable Ralph K. Winter,
Honorable J. Daniel Mahoney,
Circuit Judges.
Honorable Charles M. Metzner,
District Judge

DANIEL R. HODGE, M.D.,
Plaintiff-Appellant,

v.

ORDER
88-7657

WALTER R. KELLY, FREDERICK R. DOWNS, M.D., RICHARD LESTER, THOMAS A COUGHLIN, III, MARIO M. CUOMO, DEPARTMENT OF CORRECTIONAL SERVICES,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York and was argued.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

We affirm for substantially the reasons stated by the district court.

RALPH K. WINTER, U.S.C.J.

J. DANIEL MAHONEY, U.S.C.J.

CHARLES M. METZNER, U.S.D.J.

December 6, 1988

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL R. HODGE, M.D.

Plaintiff

vs- CIV-86-160C

WALTER R. KELLY, FREDERICK R. DOWNS, M.D., RICHARD LESTER, THOMAS A. COUGHLIN III, MARIO M. CUOMO, DEPARTMENT OF CORRECTIONAL SERVICES

Defendants

Plaintiff brings this action pro se alleging violations of rights under the United States Constitution and several sections of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and alleging various State law claims. Plaintiff has moved for summary judgment pursuant to Fed.R.Civ.P. 56, and defendant has moved to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(1) and (6) for lack of jurisdiction and failure to state a claim upon which relief can be granted.

As an initial matter, both parties have submitted several affidavits containing factual support for their respective positions, which the court has reviewed and considered. Defendants' motion is thus converted to one for summary judgment pursuant to Fed.R.Civ.P. 56. See Fed.R.Civ.P. 12(b); see also ***Chandler v. Coughlin***, 763 F.2d 110, 113 (2d Cir. 1985).

Factual and Procedural Background

Plaintiff is a physician employed by the New York State Department of Correctional Services (DOCS) at the Attica Correctional Facility since August, 1983 and is currently on administrative leave with pay. Item 26, p. 1. During the time of the events complained of, the only other staff physician at the Attica facility was defendant Dr. Frederick Downs, and defendant Richard Lester was the Health Care Facility Manager responsible for the administration of non-clinical matters. See Appendix attached to Item 12. As a physician employee of DOCS, plaintiff is required to have on file an Institutional Practice Plan (IPP), which defines the activities and schedule for which he is responsible on an ongoing basis. See Exhibit 6 attached to Item 12. One such responsibility is conducting the inmate "call-out" clinic, which is held three times daily. Item 12, pp. 4-5.

During the early months of his employment at Attica, plaintiff worked from approximately 7:00 a.m. to 12 noon, while defendant Downs was on-site during the afternoon hours and handled the afternoon sick calls. In December, 1983, plaintiff submitted his IPP, signed by then Superintendent Harold Smith, which detailed the activities that plaintiff was to perform during his 40 hour work week, and which called for 31 hours of on-site activity. Exhibit 6 attached to Item 12. This on-site requirement was subsequently changed to 25 hours by mutual agreement. See Appendix A., p. 6, attached to Item 12; see also Exhibit 8C attached to Item 12.

Plaintiff was accepted at the State University of New York at Buffalo Law School for the academic semester beginning in August, 1985. At plaintiff's request, his hours were changed from morning to afternoon to accommodate his law school schedule. See Memorandum dated July 17, 1985, attached to Item 6. Under this arrangement, plaintiff was to report to Attica by 1:00 p.m. on Monday through Friday to fulfill his 25 hours on-site requirement. Plaintiff was notified by defendants Kelly (who replaced Smith as Superintendent

agreed-upon schedule would require an educational leave of absence or a change to half-time employment status.

Beginning in late August, 1985, plaintiff's on-site attendance dropped off significantly (see Memorandum dated October 9, 1985, attached to Item 6), prompting defendant Kelly to request that plaintiff file a new IPP. Thereafter, plaintiff submitted several revised IPP's, which were rejected because they did not require plaintiff to be on-site by 1:00 p.m. every day. See Memorandum dated February 14, 1986, attached to Item 6. Plaintiff was notified that, as a result of his failure to submit an acceptable IPP, he was required to work from 10:00 a.m. to 4:00 p.m. Monday through Friday, and that failure to comply with this schedule would result in disciplinary action, including possible suspension or dismissal. Id. On February 19, 1986, plaintiff commenced this action.

Plaintiff was absent from work on February 18, 19, 20, 21, 24 and 26, 1986. He worked from 10:00 a.m. to 4:00 p.m. on February 27. When he reported for work at 10:30 a.m. on February 28, he was advised that his clinic hours had been canceled, and he left the facility at 11:00 a.m. He worked from 10:00 a.m. to 4:00 p.m. on March 3, 1986, and when he arrived for work on March 4, he was notified that he was being suspended without pay until further notice pursuant to Article 33, §33.4 of the 1985-88 collective bargaining agreement between the State of New York and the Public Employees Federation, AFL-CIO [PEF]. See Memorandum dated March 4, 1986, attached to Item 6. On March 7, 1986, plaintiff received a Notice of Discipline dismissing him from service. See Appendix A, pp. 2-4, attached to Item 12.

On February 28, 1986, plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commissions (EEOC) (Charge No. 023-86-0132), naming DOCS as respondent. See Ex-

hibit A attached to Item 14. By order of this court dated May 7, 1986, upon plaintiff's request to withdraw his complaint filed February 19, 1986, plaintiff's claims were dismissed without prejudice. Item 8.

After hearings held before an arbitrator on June 30, September 4, and October 8, 1986, plaintiff was reinstated with back pay from September 4, 1986 pursuant to an arbitration award dated December 30, 1986. Appendix A attached to Item 12.

On March 17, 1987, plaintiff filed a motion for a temporary restraining order and preliminary injunction. Item 9. The court denied plaintiff's application for a temporary restraining order, but reopened the file and ordered argument on the preliminary injunction application. Item 10. On June 16, 1987, plaintiff filed a motion to amend the complaint to add several defendants, and filed a proposed amended complaint on July 7, 1987. The court held oral argument on August 4, 1987 and by order dated August 17, 1987, the court denied plaintiff's motion for preliminary injunction. Item 24. On December 31, 1987, the court granted plaintiff's motion for leave to amend the complaint to add DOCS as a defendant with respect to plaintiff's claim under Title VII only, and denied the motion in all other respects. Item 30.

Plaintiff filed his amended complaint on January 21, 1988 (Item 32), claiming that his dismissal constituted disparate treatment based on race in violation of 42 U.S.C.§2000e. Plaintiff also claims that defendants violated his ability to contract in violation of 42 U.S.C. §1981, that defendants conspired to and did deprive him of his rights, privileges and immunities under the Constitution and laws of the United States, in violation of 42 U.S.C. §1983 and 1985, and that defendants Coughlin and Cuomo knew about the said conspiracy and neglected to prevent it, in violation of 42 U.S.C. §1986. Plaintiff also asserts common law claims of fraud and defamation.

Defendants contend that the court lacks subject matter jurisdiction since plaintiff failed to name any of the individual defendants as respondents in his EEOC charge. Item 14, pp. 2-4. Defendants also contend that plaintiff may not maintain an action under §1983 or 1985 to remedy an alleged violation of rights secured by Title VII. Item 11, pp. 2-3. Furthermore, according to defendants, the complaint fails to establish a denial of equal protection, due process, or any of plaintiff's rights secured under the Constitution or laws of the United States. Id. at 3-4. Finally, with regard to the claims of fraud and defamation, defendants contend that since the complaint raises no actionable federal claims, there can be no pendent jurisdiction over plaintiff's alleged state law claims. Id. at 4.

Summary Judgment

Summary judgment must be entered against a party "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law". Fed.R.Civ.P. 56(c).

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact", since a complete failure of proof concerning an essential element of [a] party's case renders all other facts immaterial.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). The summary judgment rule applies no less to discrimination cases than to other areas of litigation. ***Meiri v. Dacon***, 759 F. 2d 989, 998 (2d Cir. 1985); ***Nash v. Jacqueline Cochran, Inc.***, 548 F. Supp. 676, 678 (S.D.N.Y. 1982).

The requirements for presentation of proof in a Title VII case have been relatively well-defined.

First, the plaintiff has the burden of proving by a preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection"... Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.

Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981) (quoting ***McDonnell Douglas Corp. v. Green***, 411 U.S. 792, 802 (1973)). With regard to plaintiff's Title VII claim in the instant case, this court's task in reviewing the summary judgment record is to determine whether upon viewing all of the facts and the reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff, there exists sufficient evidence to create a genuine issue of material fact as to whether the employer intentionally discriminated against the plaintiff. ***Pollock v. American Tel. & Tel. Long Lines***, 794 F.2d 860, 864 (3d Cir. 1986). Thus, assuming arguendo that plaintiff can establish a prima facie case, plaintiff can withstand a motion for summary judgment if he produces direct evidence of discriminatory intent or indirect evidence from which a fact-finder can rationally infer that the DOCS' justification for dismissing him was pretextual and that racial discrimination more likely than not motivated the DOCS' actions. Id. at 864-65, see also ***Burdine***, 450 U.S. at 252-56.

The court finds that plaintiff has not produced, nor would he be able to produce, sufficient evidence to show either directly or indirectly that the DOCS' stated reasons for discharging him, i.e., failure to submit an acceptable IPP, absence from work without leave, late arrival at work, and leaving assigned post without permission (see Ap-

pendix A, pp. 2-3, attached to Item 12), were merely a pretext for discrimination. These stated grounds for the actions taken by the DOCS are not in dispute, and are amply supported in the affidavits and exhibits submitted to the court. While plaintiff's pleadings and affidavits are replete with allegations of discrimination, such conclusory statements are insufficient to satisfy the requirements of Rule 56. ***Meiri***, 759 F.2d at 998; ***Zahorik v. Cornell University***, 729 F.2d 85, 94 (2d Cir. 1984).

Accordingly, since there is no genuine issue of material fact as to whether the DOCS had legitimate, nondiscriminatory reasons for its employment decision regarding plaintiff's status, see ***Burdine***, 450 U.S. at 254, summary judgment must be entered dismissing plaintiff's Title VII claim as to all named defendants.

With regard to plaintiff's claim under 42 U.S.C. §1981, it is well settled that an action based on that section requires the plaintiff to demonstrate that the defendants intentionally discriminated against him on the basis of race. ***General Building Contractors Ass'n., Inc. v. Pennsylvania***, 458 U.S. 375, 391 (1982). From my review of the summary judgment record, it is clear that plaintiff has submitted neither direct nor circumstantial evidence of intentional racial discrimination. In light of plaintiff's additional failure to survive summary judgment dismissing his claim of racial discrimination under Title VII, his §1981 claim must fail as well as a matter of law. See ***Murray v. Thistledown Racing Club, Inc.***, 770 F.2d 63, 69 (6th Cir. 1985).

In order to recover under 42 U.S.C. §1983, plaintiff must prove (1) deprivation of a right secured by the constitution or laws of the United States (2) by a defendant action under color of state law. ***Adickes v. Kress & Co.***, 398 U.S. 144, 150 (1970). In the instant case, the essence of plaintiff's §1983 claim is that the actions of defendants in setting his work schedule deprived him, without due process, of his property interest in continued employment by theState of New York, deprived him of his liberty interest in attending law school, and deprived him

of equal protection under the law. Upon review of the record, it is evident that none of these allegations support an action under §1983. Property interests "are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." ***Board of Regents v. Roth***, 408 U.S. 564, (1972). Here, while plaintiff might arguably make out a due process claim based on contractual rights secured in the collective bargaining agreement between DOCS and PEF, plaintiff was afforded a full hearing on the disciplinary charges filed against him, and thus received all the process that was due. Plaintiff's contention that he was deprived of a constitutionally protected liberty interest in attending law school is not, not could it be, supported by any authority, and does not constitute a basis for relief under §1983. Finally, plaintiff has not alleged sufficient similarity in his situation and that of defendant Downs to support an equal protection claim, since there is no indication anywhere in the pleadings or elsewhere in the record that defendant Downs had any plans to attend law school or to attain some other academic degree. Accordingly, since plaintiff has failed to establish the deprivation of any protected right, privilege or immunity protected by the Constitution or laws of the United States, there remains no genuine issue of material fact as to plaintiff's claim under §1983, and summary judgment must be entered dismissing that claim.

Plaintiff has also asserted a claim under 42 U.S.C. §1985. In an action under §1985(3), the complaint must allege (1) a conspiracy, (2) to deprive any person or class of persons of equal protection of the laws or of equal privileges and immunities under the laws, (3) an act done by one of the conspirators in furtherance of the conspiracy, and (4) personal injury, property damage or a deprivation of any right or privilege of a citizen of the United States. ***Griffin v. Breckenridge***, 403 U.S. 88, 102-03 (1971). The mere fact that a conspiracy is alleged, however, is insufficient to defeat a motion for summary judgment; plaintiff must state specific facts showing with some degree of

particularity that the conspiracy was motivated by a racial or some other class-based animus, id., and that the named defendants' participation in the conspiracy was the proximate cause of his injury. ***Arnold v. International Business Machines Corp.***, 637 F.2d 1350 (9th Cir. 1981); ***Hewitt v. Grabicki***, 596 F. Supp. 297, 304 (E.D.Wa. 1984). My review of the summary judgment recorded indicates that plaintiff has failed to state such facts. Further, in light of plaintiff's insufficient showing to survive summary judgment under §§1981 and 1983, the record is likewise insufficient to provide the substantive basis for §1985 purposes. See ***Chambers v. Omaha Girls Club***, 629 F. Supp. 925, 940 (D.Neb. 1986). Summary judgment must therefore be entered dismissing plaintiff's claim under 53 U.S.C. §1985.

Having failed to demonstrate sufficient facts to create a genuine issue as to defendants' liability under 42 U.S.C. §1985, plaintiff has a fortiori failed to do so under 42 U.S.C. §1986. ***Brawer v. Horowitz***, 535 F. Supp. 830, 841 (3d Cir. 1976): ***Hahn v. Sargent***, 523 F.2d 461, 469-70 (1st Cir. 1975).

Finally, since plaintiff's federal claims are dismissed before trial, any pendent state law claims should be dismissed as well under the doctrine enunciated in ***United Mine Workers v. Gibbs***, 383 U.S. 715, 726 (1966).

Accordingly, summary judgment is entered dismissing plaintiff's complaint in its entirety.

So ordered.

JOHN T. CURTIN
United States District Judge

Dated: July 8, 1988

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL R. HODGE, M.D.

JUDGMENT IN A CIVIL CASE
CASE NUMBER CIV-86-160C

V.

WALTER R. KELLY, FREDERICK R. DOWNS, M.D., RICHARD LESTER, THOMAS A. COUGHLIN, III, MARIO M. CUOMO, DEPARTMENT OF CORRECTION SERVICES

[ ] JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] DECISION BY COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that summary judgment is entered dismissing plaintiff's complaint in its entirety.

July 11, 1988

Clerk MICHAEL J. KAPLAN

(By) Deputy Clerk

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

U.S. Constitution, Art. IV sect. 2 cl. 3

[3] No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of Party to whom such Service or Labor may be due.

U.S. Constitution, Art. VI cl. 3

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

U.S. Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S.Constitution, Amendment V

...nor be deprived of life, liberty, or property, without due process of law;

U.S. Constitution, Amendment XIV

Section 1. ... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1981 Equal rights under the law: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

42 U.S.C. §1982 Property rights of citizens: "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

42 U.S.C. §1983 Civil action for deprivation of rights: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

42 U.S.C. §1985 Depriving persons of rights and privileges: "If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons

of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. §1986 Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action.

42 U.S.C. §1988 In any action of proceeding to enforce a provision of section 1981, 1982, 1983, 1985 and 1986 of this title...the court, in its discretion, may allow the prevailing party, other than the United

States, a reasonable attorney's fee as part of the costs.

42 U.S.C. §2000e (a) It shall be an unlawful employment practice for an employer:

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with the respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex or national origin.

Sect. 2000e-3 (Sect. 704) (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this subchapter.

18 U.S.C. §241 Deprivation of rights under color of law: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or

protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

Disciplinary Rules

DR 1-102

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 2-109. Acceptance of Employment

(A) A lawyer shall not accept employment on behalf of a person if he knows or it is obvious that such person wishes to:

(1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for him, merely for the purpose of harassing or maliciously injuring any person.[1]

(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 5-102. Withdrawal as Counsel When the Lawyer Becomes a Witness

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B)(1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

DR 7-102. Representing a Client Within the Bounds of the Law

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or is it obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

INSTITUTIONAL PRACTICE PLAN GUIDELINES

POLICY

All physician employees shall have on file an Institutional Practice Plan (IPP) which reasonably defines the routine activities for which that physician is responsible on an on-going basis. The IPP shall recognize the:

- considerable responsibilities and obligation physicians have to provide on-site as well as on-call coverage;

- need to maintain clinical skills and peer interaction;

- need to participate in research and professional development; and

- need to provide professional consultation i.e., liaison with facility administration and Central Office.

PROCESS

The Institutional Practice Plan shall utilize the following rationale for the distribution of physician hours:

A. All full-time physicians will work a 40 hour week or its equivalent and half-time physicians will work a 20 hour week or its equivalent.

B. The forty hours or part thereof may be satisfied through a combination of activities including:

1. Regularly scheduled on-site coverage
2. Weekend infirmary rounds
3. Hospital visitation
4. Performance of in-patient procedures at a community hospital
5. On-call coverage of the facility population

5. On-call coverage of the facility population
6. Participation in administrative meetings at the facility or Central Office
7. Profession consultation with Central Office staff
8. Approved professional development programs

C. Each full-time physician will develop a routine weekly schedule which shall provide 30 hours of on-site or direct patient care activity with the remaining 10 hours devoted to non-patient care activities. Part-time physicians shall provide a like proportion of on-site or direct patient care activity.

Credit for the time dedicated to the aforementioned activities shall be apportioned for a full-time physician as follows:

1. One hour of on-site activity equals 1/40th of the obligatory 40 hours.
2. One hour in community hospitals equals 1/40th of the obligatory 40 hours.
3. Each 8 hour period on-calls equals 1/40th of the obligatory 40 hours.

Credit for the time dedicated to the aforementioned activities shall be apportioned for a half-time physician as follows:

1. One hour of on-site activity equals 1/20 of the obligatory 20 hours.
2. One hour in community hospitals equals 1/20th of the obligatory 20 hours.
3. Each 8 hour period on-calls equals 1/20th of the obligatory 20 hours.

In the event that a physician is other than a half-time or full-time employee, the percent of time for which that physician was hired shall be used to determine the proportions outlined above.

INSTITUTIONAL PRACTICE PLAN

for

DANIEL R. HODGE, M.D.

ATTICA	CLINICAL PHYSICIAN II	FULL TIME
Facility	Title & line #	% of Time Worked

The above referenced physician's workweek is 40 hours. These hours shall be satisfied through the performance of the following activities for the number of hours indicated.

On-Site Activities:

Regularly Scheduled On-Site Coverage (Monday through Friday)	28
Weekend Infirmary Rounds	0
Participation in Administrative Meeting at the Facility	1
Return to the Facility After Hours	0
Other (please specify) SEE ADDENDUM ON SUNY @ BUFFALO MEDICAL SCHOOL	2

Off-Site Activities

Hospital Rounds - Will complete Application to MEDICAL STAFF ECMC	2
Performance of Procedures at Community General Hospital	0
Professional Consultations	0

On-Call Coverage of Facility Population in Absence of Health Services Director	5
Approved Professional Development Programs	2
Daniel R. Hodge Physician Signature	Dec. 16, 1983
Harold J. Smith Superintendent Signature	Dec. 22, 1983
Raymond Broaddus Assistant Commissioner for Health Services	Dec. 28, 1983

PUBLIC EMPLOYEE FEDERATION CONTRACT

Article 12

12.6 Vacation Use

(a) Vacation credits may be used in such units of time at the appointing authority may approve, but the appointing authority shall not require that vacation credits be used in units greater than one-quarter hour. This provision shall not supersede any local arrangements which provide for liquidation in smaller units of time.

12.11 Use of Personal Leave

(a) The State shall not require an employee to give a reason as a condition for approving the use of personal leave credits, provided, however, that prior approval for the requested leave must be obtained, that the resulting absence will not interfere with the proper conduct of governmental functions, and that an employee who has exhausted personal leave credits shall charge approved absences from work necessitated by personal business or religious observance to accumulated vacation or overtime credits.

12.13 Absence-Extraordinary Circumstances

(a) Employees who have reported for duty and, because of extraordinary circumstances beyond their control, are directed to leave work, shall not be required to charge such directed absence during such day to leave credits.

12.17 Maintenance of Time Records

(a) No employee in this unit shall be required to punch a time clock or record attendance with a timekeeper. An employee eligible to earn overtime shall be required to keep daily time records showing actual hours worked on forms to be provided by the State and such records shall be subject to review and approval by the supervisor. Employees not eligible to earn overtime shall maintain a daily record of absences and leave credits earned and used in accordance with the Attendance Rules on forms to be provided by the State.

Article 36

36.2 The State agrees to continue its established policy against all forms of illegal discrimination with regard to race, creed, color, national origin, sex, age or handicap, or the proper exercise by an employee of the rights guaranteed by the Public Employees' Fair Employment Act.

STATE UNIVERSITY OF NEW YORK AT BUFFALO
LAW SCHOOL 1985
APPLICANT'S PERSONAL STATEMENT

In a general sense, the motivation at the age of forty and after having been a physician for eight years now, to embark on yet another challenging and adventurous career course, stems from more than just a wish to fulfill the credo of "Let everyone become all that he or she is capable of being," because it is in fact, only more evidence of a certain measure of intellectual restlessness which haunts my soul. (I have borrowed that time-honored, and venerable spiritual myth for lack of a richer and more universally recognizable concept, laden with as many deeply passionate overtones of meaning.) But more specifically, I feel that being armed with the delicate instruments and techniques to probe both the microscopic and macroscopic structure of man's biological existence and behavior, and then additionally that being privy to institutional rules which govern man's myriad relationships and interactions in our present society, might provide me with a unique and panoramic platform from which to direct social reform where necessary and to then hopefully improve, in harmony with our environment, both the quality and length of man's life on this planet and beyond. To some it might seem to be a grandiose spectacle but it is with great sincerity that I nurture such thought and pursue that goal.

The length of an individual's existence has to be calculated from a hazy beginning to, at times, a nebulous end. But when really does separate and individual life begin? And when truly is death's door irreversibly closed? With instruments, methodologies and the capacity of the present scientific mind, our perspective has taken on a more realistic design and we can closely approach the answers to those questions.

The sting of death had a wide range of values before the new promise of transplantation technology came into vogue. Now whole organ systems can be kept viable for extended period while the search for an appropriate recipient proceeds. The limiting factor of life for

practical reasons is based on the status of the brain. So now the vital question which arises is whether soupy, enzyme-degraded brain tissue consisting formerly of about 14 billion spatially arranged nerve cells, can integrally reform, then reanastamose with such precision as to assume their original morphology and function? Obviously not! Death's door closes irreversibly then with brain death and some laws reflect that fact presently. On the other hand, when brain function is still intact, who then should decide to terminate or not initiate the use of sophisticated life sustaining instruments and procedures, which may in essence just prolong pain and suffering with no prospect of returning the individual to a quality life worth living? Should that decision be made by the patient, the family, the doctors, the lawyers or the State? Resolution often lingers: There are no ready-made answers, but some fairly specific guidelines are needed since each case may be so different.

In regard to the question of when individual life begins, there is one very cogent observation to be made. It is that in some definite but as yet indiscernible way living matter was formulated and constituted eons ago, perhaps in a somewhat different environmental milieu but nonetheless, it has never since ended. A stream or line of living matter is simply transferred by each species from one generation to another in relay fashion like a longitudinal "torch of life" to the present day. In addition, no dead sperm can unite with a dead ovum to produce a live zygote and a growing, living embryo. So, the propagation of life is a continuous living process with no end or beginning of life, from one entity to another and the question of when does life begin is moot.

In man and ostensibly in other life forms, pleasure, pregnancy, and disease can all potentially accompany the very same biologic act of procreation-recreation. Until fairly recent times, no effective separation of these three consequences was possible. And as yet, no totally acceptable and efficient method exists to effect such a separation. Perhaps soon that dilemma will be resolved, but meanwhile, pregnancy and disease proceed exponentially and deductively so must pleasure also. The urgency of population and venereal disease control

is clear. To assure the quality of life on earth, man must now take bold and specific measures to numerically attenuate his own propagation, like it or not. Still far from being resolved is the matter of where along the line of transference of life should interference with pregnancy be effected: pre or post-conceptually? Preconceptually, there is the prospect of facing intense remorse over the immoral compromise of 400 million living sperm cells per average ejaculate. Shouldn't they each and every one become individuals at some point? On the other hand, post-conceptually there is universally a genuine discomfort at the prospect of deciding when a single embryo should be terminated if procreation was not the aim of coitus. But is the termination of a single living embryo, a greater moral infraction than the genocidal compromise of 400 million just as viable sperm cells? The former have forty-six living chromosomes of human genetic material and the latter contain a just as energetic twenty-three. Pontificating about the morality of chromosomal aggregation probabilities seems to be a bit alien to the biological order of things in the real world. Man's intervention is quite arbitrary and as consequential as he chooses it to be.

Venereal disease presents a challenge of a similar nature. The technology to wipe out the most perplexing of these diseases exists, but pomp and circumstance are among the obstacles to their eradication. In as much as the problem is so pragmatically urgent, boldly we could consider, since most infections are asymptomatic and carriers are common in all age groups but particularly among young adults, that the whole sexually active nation simultaneously at the dinner hour, annually, on Valentine's Day, appropriately enough, take Amoxicillin and Doxycycline, purchased over the counter especially for that occasion only, the currently recommended specific oral therapy barring contraindications, for chlamydial and gonorrheal infection, in order to wipe down and perhaps out, the rising epidemic rate of propagation of these top two sexually transmitted diseases. Birth defects, tubal pregnancies, perinatal mortality and morbidity would likely hit new lows nationally as a result. But does this nation possess such unpretentiously cogent wisdom? Could it be made to see the forest and the trees simultaneously, or perhaps even sequentially?

Technology solves many problems and usually creates many more, some of which defy classification. Let the mind wander and wonder for example, if a childless person, male or female, has the right to arrange sperm and/or ovum collection and storage, perhaps at a market price, then effect artificial external fertilization followed then by surrogate maternal embryonic implantation and gestation, who then, the question arises, is the legal parent in this synthetic division of love and labor? Co-parents or co-defendants, anybody? Clearly such practical considerations must necessarily temper our philosophical views and thus direct the concomitant social imperative we now have before us to formulate a wise legal matrix upon which to institute new laws conducive to dynamic and qualitatively superior cultural growth as it relates to each member of our populace, from conception to final interment. These kinds of challenges will forever present an ongoing threat to the status quo as great controversies an even greater compromises abound.

Is it not also the time, as we seek to improve the quality of individual life and in as much the mood for Gargantuan change saturates the air, that some Don Quixote should emerge to commence a fulminating class-action suit for compensatory and punitive damages against all those governmental and corporate criminals who prey on man's innate quest for self-esteem, albeit only vicariously gratified, via a cowboy roaming a picturesque prairie or a female sex object assuming some intimately alluring pose, both myths helping to promote for purely economic gains and devoid of any other socially redeeming value, the consumption of tobacco and alcohol, materially two of the most toxic substances known to man, respectively responsible for over 20% of all cancers and 50% of all traffic fatalities in the U.S., not to mention the billions spent on the resultant and directly related health care cost twenty years later, trying in what has by then come to be, a futile effort to mend senseless damage and realistically precluding a net improvement in either the quality or length of life of its victims but yet guaranteeing without a shadow of mitigating consideration so much prolonged suffering, needless pain and premature death? Isn't there a legal basis for protecting this nation against the brutal onslaught of irresponsible media and various demonic sponsors who perpetuate

this kind of holocaustic mediocrity? Tobacco and alcohol, are they foods or are they drugs? Are they alimentary of just uh...elementary? (said with a snobbish British accent) In an effort to almost instantaneously reverse, affirmative-action style, the affects of these multi-million-seller killers, tobacco (1000 deaths per day) and alcohol (300 deaths per day), should a mandatory national course be instituted to foster respect for and a genuine care of the biology of man, of the person, not by exterior prohibition but by interior enlightenment from kindergarten on, along with readin', ritin', and 'rithmetic, long before the tender age of vulnerability arrives, during adolescence, when biologically irresponsible behavior role-models exert their most deadly influence?

Our cultural myth of guaranteed life, liberty and the pursuit of happiness needs more medico-legal muscle in my estimation. I would like an opportunity to perhaps serve our country from the vantage of this unique, simultaneous perspective of Medicine and Law. So, being a lawyer also then is for me like a tumultuous river flowing to the tempestuous sea. And finally, conventional wisdom has it that law is an apt preparation for public office. Rudolph Virchow, a father of modern medicine said that, "Medicine is a social science, and politics is nothing else but medicine on a larger scale." It follows then that the combination might be at least additive and perhaps synergistic, at best. I have a good heritage in several ways none of the least of which is my first name, Daniel.

There is Senator Daniel P. Moynihan, sociologist Daniel Bell, black heart surgery pioneer physician, Daniel Hale Williams and ringing in my ears since early childhood, is the classic old hymn whose chorus beckons:

Dare to be Daniel.
Dare to stand alone.
Dare to have a purpose firm and
Dare to make it known.

Daniel R. Hodge, M.D.

BLACKS FOR BUSH

Why Black people are far better off with a Republican Administration (and of course white people too)

(1) Contrary to popular Black belief, and the widespread myth common to certain Aristocratic circles, the vast majority of the so-called **Liberal Democrats** are, in fact, for the most part, silent White Supremacy racists who are, in **Deed, no less racist** than the so-called Conservative Republican racists. In fact, the Liberal Democrats, with rare exception, are the smiling-in-your-face-while-stabbing-you-in-the-back-kind of reprehensibles that lull Blacks into a false sense of security and to their invariable detriment, with phony promises, election after election after election, 1988 being no different! The real deal is that Blacks get only what they are willing to **fight and die** for under any administration! Then after a vicious fight by Blacks against **overt** and **covert** white racism, the so-called Liberal White Democrats start to act a little more reasonably and perhaps even right, remembering the messy 1960's revolution, burn baby burn.

(2) Contrary to popular Black belief, there are only a precious few Non-racist Enlightened White people (NEW People, for short) on this globe, let alone in the U.S.A. and, **the Democratic Party doesn't have a monopoly** on these few (NEW People): the Non-racist Enlightened White People, a silent **mini-minority** in any party, are the white people:

(a) who **do** good and not just **talk** good.

(b) who recognize white racism for what it is, stripped of its protective pretextual envelopes and they don't feel the need to make excuses for it.

(c) who are found in minute sprinkles in both parties and in all walks in life. You know them by their **deeds**, and not just their **words**; and

(d) who don't need to go out of their way to show the world how **"Liberal"** they are, nor to **distance themselves** from known blatant apartheid-**KKK**-type racism. (As was

shown by the great "Liberal" American corporate, coitus interruptus, pull-out from South Africa, after having been lying in bed fornicating with apartheid racists for centuries, and these corporations still continue proxy, novel intercourse through other "creative" economic arrangements). In fact (NEW People) work lovingly with avowed white supremacy racists to show by example that such doctrines are factually, morally and legally wrong (witness Paul Simon and Kellogg Co.).

(3) Democratic Administrations PROCLAIM, based on the false notion, that any social problem, particularly white racism, which is a white problem in the first instance, can be cured by empty, senseless, guilt-ridden, expensive, unworkable, SOCIAL PROGRAMS, which really only provide jobs for administrative, professional white people, under the guise of being remedial, e.g. model cities, quotas, special education, phony Federal statutes collectively known as the race-secti-cidals. (42 U.S.C. §§1981, 1982, 1983, 1984, 1985, 1986, 1988, 2000 et seq.) which the racist pseudo-liberal courts, never enforce even when there is blatant evidence to support a **valid legal claim**, because the courts shield and protect racist tortfeasors. OH, BLACK MAN, IT'S NOT INTENTIONAL DISCRIMINATION. IT'S AN ACCIDENT OF FATE!

(4) The Democratic Administrations in recent times have had (a) an atrocious economic record of high inflation, (b) high interest rates, (c) high crime at home (d) a foreign policy guaranteed to generate low national esteem, timidity in the lack of prudent use of force, as we must, (e) an anti-S.D.I. movement, (the system whether real or not has brought the Soviets to their knees and resulted in an INF Treaty and the **beginning of the end** of a NUCLEAR WAR psychosis) and (f) a severe compromise of our national defense: No defense means no Country, no Constitution, no Liberty, No anything (that is not a joke; so why don't we lay down all our arms for the sake of saving the planet from a nuclear holocaust?).

(5) There is an economic **trickle-down theory** which is a stark reality relative to Blacks and other underlings, regardless of, and under any administration. With the Democratic atrocious economics there is considerably **less to trickle down** in the first instance than under our present Republican administration. So **keep** the rate of **trickle down, UP!**

(6) The so-called stock market crash is nothing more than the conservative hyperbolic hype of avarice, choking on sympathy-craving greed; ignore it! The so-called homeless people hype is the **other extreme** of sympathy seeking **liberal causes** looking for a **rebel:** (a) a careful examination of the fact situation in such cases clearly reveal other factors having nothing to do with the economy which are operative; (b) we import useful and efficient labor to harvest our crops and do other non-skilled or semi-skilled work which could provide the homeless at least seasonal employment in the bright outdoor fresh air, but there are few takers (c) any **bleeding-heart liberals** who find a homeless should commence instant proceedings for adoption of that unfortunate: It will be quickly apparent how "Liberal" silence will truly be golden then.

(7) Contrary to the grade school myth of George Washington and the cherry tree etc., the real truth about the Constitution was that it was constructed only **for white men:** most certainly not for white women or Blacks of any gender. Founding father Thomas Jefferson, who fathered several Black children and of course the Constitution (talked white, slept Black) wrote in his only book, Notes on Virginia, some six years **after** his famous "We hold these truths to be self evident ...created equal... etc. hype:

> "I advance it, therefore, as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments both of body and mind."

Yow, Tom, you can now roll over in your grave on this special occasion for this **BLACK** physician/attorney, Dr. Daniel R. Hodge, M.D., J.D.

Conclusion

For all the foregoing reasons, Blacks must vote Republican and convince Jesse to switch parties and to considerably alter some of his Liberal fantasies.

Let's keep America on the move!

NON-TAX DEDUCTIBLE CONTRIBUTION

If you have been enlightened, whether you're black or white or other as they say, send money - lots of it - to see this message being used to combat Institutionalized White Racism. Other similar messages must be sent across America, not necessarily about George Bush, or George Washington, or Michael Dukakis for that matter, in full media saturation to the nation, long after the election is over. Forget about tax deductability. Please do something for this most noble cause without tentacles: besides keep big government out of this.

[] Letters and comments $.25 [] $10 [] $100 [] $1000
[] $1 Million [] $10 Million [] More

Trust me. Make check or money order payable to
NEW People and mail to:
P.O. BOX 788, ELLICOTT STATION
BUFFALO, NEW YORK 14205 or
88 E. 39TH STREET, BROOKLYN, NY 11203

AFFIDAVIT

WASHINGTON, D.C.) SS.:

GEORGE HERBERT WALKER BUSH, being duly sworn deposes and says:

1) I'm not in the on-deck circle anymore; I'm at the plate, and let me just say: It's a new day.

2) The name of my autobiography is ***Looking Forward***, and that is what I intend to do today.

3) I am here to tell you who I, George Bush, am, and where I want to take this country.

4) I will have a positive civil rights agenda. I guarantee you, I will be personally involved in protecting the civil rights of all Americans.

5) To me, this is not just a matter of social policy, but of fundamental rights - the inherent equality of all men and women. Who we are as a people can be measured by how we uphold and defend the rights of all. And it is our willingness to respect and uphold these rights - even when it is difficult - that sets America apart from every other nation on Earth.

6) I intend to stand for a new harmony among the races. We are on a journey to a new century, and we must finally leave the tired old baggage of bigotry behind us. Wherever racism rears its ugly head - Howard Beach, Forsyth County, wherever - we must be there to cut it off.

7) I intend to attract to government and to the Republican Party, the party of Lincoln, the broadest base of Americans possible. I will have minority men and women of excellence as full-scale partners in my Administration.

8) I tell you today, they will always be welcome at my house even when my house is your house - the White House.

9) The challenge we face in the years ahead is to go beyond the notion of merely upholding and enforcing the law - to go beyond the protection of rights to the creation of opportunity.

10) I am a practical man; I like what works. Policies of opening up economic growth and opportunity can work and will work because they help people help themselves.

11) A Bush administration will begin with education, because education is the key to opportunity.

12) It is "Back to School/Stay in School," and our theme, "Knowledge is Power."

13) Give any American kid an equal place at the starting line, and just watch what that kid can do.

14) And we must emphasize the importance of family and work and education.

15) Our country was founded to secure the right to life, liberty, and the pursuit of happiness, and that should be the first responsibility of our government.

16) I want to help more black Americans and other minorities experience the pride and dignity of ownership, of building something in the private sector.

17) But I offer, you, as well, my strong commitment to do whatever it takes to ensure the full participation of all Americans in our economy and our government.

18) You will be partners in my Presidency. By working together and only by working together - we can finally be one nation under God, indivisible, with liberty and justice for all.

19) Let this be our legacy—for our children and our children's children—so that they might, in the words of Isaiah, "Mount up with wings like eagles...run and not be weary ... walk and not faint." Thank you, and God bless you all.

George Herbert Walker Bush

Sworn to before me
this 12th day of July, 1988

_____

Benjamin Hooks

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL R. HODGE, M.D.,
Plaintiff,

vs- CIV-86-160C

WALTER R. KELLY, et al.,
Defendants.

On August 4, 1987, the court heard oral argument on the application of plaintiff for a preliminary injunction.

Plaintiff is a physician presently employed on a part-time basis at the Attica Correctional Facility. He also desires to attend law school, and he complains that the hours that the facility wants him to work conflict with the law school class schedule.

Because plaintiff has failed to demonstrate a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation, the application is denied.

Further, I do not find that plaintiff will be **irreparably harmed** by the proposed work assignment. **If he chooses, he may seek employment elsewhere and still attend law school.**

I understand that there is pending a motion to dismiss. Plaintiff shall be given an opportunity to respond to that motion, which should be made not later than September 2, 1987. The court will then set an argument date for the motion to dismiss and the motion by plaintiff to amend the complaint.

So ordered.

JOHN T. CURTIN
United States District Judge

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

MARIO CUOMO, being duly sworn, deposes and says:

1.) That if Dr. Hodge, the black physician at Attica...who has just started his third year at S.U.N.Y. at Buffalo Law School, despite perennial racist obstructions and the racist switch in his clinic schedule by Walt-the-Whiz K.K. Kelly, designed maliciously to preclude Law School attendance altogether... wants to continue and finish up in May, 1988, then let him do as Judge Curtin has suggested in his order denying preliminary injunctive relief (The Judge should have ordered him to be fired) [see A-39 for Judge's order].

2.) Let him find employment elsewhere, and give up a tenured position making $74,000.00 per year, plus benefits, so he can attend law school if he so wishes, rather than us abiding by an **I.P.P. Contract** which permits the black physician to select any of three **fungible** clinic schedules at Attica, while fellow white racist, Dr. Frederickkk R. Downs, comes and goes as he pleases in tandem with the demands of his practice and his farm.

3.) We must stop blacks from reaching the top of the educational ladder, since that will destroy our racist pet conviction of black inferiority.

4.) My fellow governor George Wallace was right! Give blacks an opportunity to disprove our racist fundamentally flawed, jim-crow, slave-age **mental fixations** about them, particularly the inferiority conceptual fallacies AND THEY WILL DISPROVE THEM!

We can never allow this! Subjugation of blacks FOREVER

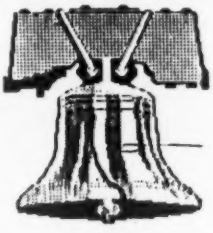
Gov

THE GOV.



Sworn to before me this 11th day
of September, 1987

EMMA LAZARUS III



NEW YORK STATE
GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS
PROGRAM PLANNING AND **BLACK** EMPLOYEE
DEVELOPMENT ***OBSTRUCTION*** DIVISION
Corning Towers, 23rd Floor
Albany, New York 12223

DANIEL R. HODGE, M.D.
27A LONGMEADOW
AMHERST, N.Y. 14226

17 Sep 1987

Mario M. Cuomo
Governor
State of New York
Executive Chamber
Albany, NY 12224

Dearest Mario:

Today is the 200th anniversary celebration of the adoption of our enduring Constitution.

I am impressed with your various programs, e.g., the productivity award, saving Bonds (U.S.) and even Executive order # 6.

But I think you have totally neglected an even ***far greater investment*** in the ***future*** of N.Y.S. and America: you should stop ignoring major violations of Civil Rights Laws and use the prestige of your office to further those causes.

You weren't aware of this **travesty of justice**? Well, now you know.

Love,

Dan

Enclosure:

State of New York
EXECUTIVE CHAMBER
Albany, 12224

September 28, 1987

Daniel R. Hodge
27A Longmeadow
Amherst, NY 14226

Dear Mr. Hodge:

On behalf of Governor Cuomo, I acknowledge receipt of your letter dated September 17, 1987 concerning your case.

It does not appear that there is anything that the Governor is empowered to do that may be of assistance to you. Our Constitution provides for the separation of the executive and judicial functions of governments and the Governor is, therefore, precluded from intervention in any judicial matter.

I realize that my reply may be disappointing to you, but I hope that you understand and appreciate that there are constitutional and legal prohibitions against the Governor's intervention in such matters.

Thank you for writing to the Governor.

Very truly yours,

Alyse Gray
Assistant Counsel
to the Governor

DANIEL R. HODGE, M.D.
27 A Longmeadow Rd.
Amherst, N.Y. 14226

October 4, 1987

Gov. Mario M. Cuomo
State of New YOrk
Executive Chamber
Albany, NY 12224

Dear Governor Cuomo:

You can rest assured that I am quite familiar with the concept of the ***Separation of Powers*** of our government, particularly now that I'm in my third and final year of Law School at the S.U.N.Y. of Buffalo.

No one is suggesting that you interfere with the ***judicial*** or ***legislative*** branches of government. Your assistant, Ms. Alyse Gray, in her September 28, 1987 response to me on your behalf, clearly misses the point of this racist tragedy that has been and still is being perpetrated by people ***within the executive branch of government***, people under your control, like the local management team at Attica Correctional Facility, and all the other racist conspirators named in the amended federal action Civ. 86-160C, including the Attorney General's Office. You are being asked to clean up ***your own branch,*** and since it seems to be in vogue nowadays for Chief Executives to deny ever being made aware or major violations of the Law of the Land, blatantly occurring under their noses (e.g., John Dean and Olie North), I decided that you should first hand be made aware, even at this late stage in the proceeding that because of this on-going racist conspiracy against me ***within your own branch,*** it was necessary to petition the federal

tribunal for redress. (Civ. 86-160C). That, dear governor, should be your perspective and understanding of the controversy, not the circumlocution proffered by Mr. Evan A. Davis through Ms. Alyse Gray, Assistant Counsel to you.

On September 30, 1987, I spoke to Ms. Alyse Gray so that she could be in a position to make and ***informed judgment*** about the matter and not an assembly line reflex disposition of the problem by sending the various court documents (which I sent directly to you) back to the Attorney General's Office, which are themselves deeply involved in the ***racist conspiracy*** against me.

Should those ***documents*** be sent to the Albany Legislative Gazette so that you, dear governor, should be startled and surprised by Allen Chartock, or would it be better for you politically and legally to know in advance about the major violations of the Law of the Land that you are neglecting to prevent, which in and of itself is a violation of 42 U.S.C. §1986?

The point of this letter is to perhaps get ***you personally*** in on the case, and although it may be embarrassing in light of your denied but clearly obvious aspirations to become President of the United States, to have a ***racist conspiracy*** going on right under your liberal nose, it is better by far to admit to a negligence charge now and perhaps settle the matter out-of-court, than to persist in pretending and feigning ignorance of the NATIONAL DISGRACE all the way to the Supreme Court and the media. I simply want the ***racist conspiracy*** against a black doctor going to Law School to be stopped in its tracks and that just compensation for various harms be paid to me, and that there be compliance with the **Institutional Practice Plan** which confers a special status to physicians, who unlike other employees are allowed ***great flexibility*** in arranging ***how*** and ***when*** they will provide services for the Department of Correctional Services.

When I see that you honestly and in good faith addressed these real issues, then I can fully say that you are doing ***your job within the Executive branch*** to clean up violations of the Law of the Land, our enduring Constitution, 200 years to the day 17 September 1987, of its adoption.

In addition to being the date of my first letter to you, it is also my mother's birthday. We also are immigrants, dear governor, from the Island of St. Martin, in the beautiful Caribbean.

Very truly yours,

DANIEL R. HODGE, M.D.

DRH:ek

cc: Prof. Allan S. Chartock
George K. Arthur
Arthur O. Eve

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

WILLIAM D. MALDOVAN, being duly sworn, deposes and says:

1. I am an Assistant Attorney General, of counsel to Robert Abrams, Attorney General of the State of New York, attorney for the defendants in an action pending in the United States District Court, Western District of New York, ***Daniel R. Hodge, M.D. v. Walter R. Kelly, et al.***, Civ-86-160C.

2. On February 26, 1986, at 9:00 a.m., I appeared before Hon. John T. Curtin, United States District Judge, at the United States Courthouse, 68 Court Street, Buffalo, New York on the return of an Order to Show Cause in this matter.

3. On that date and time, the plaintiff in this action, Daniel R. Hodge, M.D., also appeared, without counsel, before Judge Curtin.

4. The matter was adjourned until later that day for plaintiff to secure the attendance of his counsel and at approximately 3:30 p.m. on February 26, 1986, the plaintiff, Daniel R. Hodge, M.D., his counsel, J. Glenn Davis, Esq., and I again appeared before Judge Curtin at the United States Courthouse.

WILLIAM D. MALDOVAN

Sworn to before me his
26th day of March, 1986.
Cindy M. Ohara

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL R. HODGE, M.D.
Plaintiff,

AFFIDAVIT

v.

CIV-86-160C

WALTER R. KELLY, et al.
Defendant.

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

WILLIAM D. MALDOVAN, being duly sworn, deposes and says:

1. I am an Assistant Attorney General, of counsel to Robert Abrams, Attorney General of the State of New York, attorney for the defendants herein and, as such, am fully familiar with the facts and circumstances of this case.

2. This affidavit is submitted in opposition to plaintiff's motion for leave to amend the complaint, including adding me as a defendant.

3. This action was originally commenced by order to show cause granted on or about February 19, 1986.

4. Thereafter, following the filing of a motion to dismiss on behalf of the defendants, and upon the plaintiff's express desire to withdraw his complaint without prejudice, the complaint was dismissed without prejudice by the Court on May 7, 1986.

5. Upon the filing of a new complaint on or about March 13, 1987, this case was reopened by order of this Court dated March 18, 1987 and remains pending.

6. On or about March 26, 1986, I was requested by Frederick N. Richardson, First Deputy Superintendent, Attica Correctional Facility, to provide an affidavit to him regarding my appearances before this Court with plaintiff on February 26, 1986.

7. It was my understanding that the affidavit was to be used to verify plaintiff's whereabouts on February 26, 1986 in connection with a disciplinary proceeding against plaintiff pursuant to the provisions of the collective bargaining agreement between the State of New York and the Public Employees Federation.

8. On March 26, 1986 I prepared and executed the requested affidavit and mailed it to Deputy Superintendent Richardson. A copy of the affidavit is attached hereto.

9. Upon information and belief, the specific disciplinary charge against plaintiff involving his appearances in Court on February 26, 1986 was not sustained by the arbitrator and he was not disciplined as a result of his activities on that day.

10. This and any other involvement I have had with plaintiff or any person regarding plaintiff has been in my role as attorney for the defendants herein.

WILLIAM D. MALDOVAN

Subscribed and sworn to before me
this 3rd day to September 1987.

MARGARET H. HOPKINS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 30, 1988

THE ANSWERS TO THE *"NEW YORK BURNING"* QUESTIONS PRESENTED BY ROBERT ABRAMS, ATTORNEY GENERAL OF THE STATE OF NEW YORK IN HIS BRIEF FOR THE DEFENDANT-APPELLEES TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

1. Whether plaintiff has demonstrated facts to support his claim that the reasons given for *adverse employment decisions* were a mere pretext for racially discriminatory motives?

Petitioner's Answer

Modern White Northern liberals have gone underground with their racist operations, which would make the soviet KGB look like child's play. Northern liberals can be now labeled as K (AG) B agents and that doesn't stand for Kind (Attorney General) Bob.

The euphemistic "adverse employment decisions" Bob, were:

Contrary to a contract (IPP) that allows the physician ***great flexibility*** in selecting ***how*** and ***when*** he will offer his services, the "local management team" at Attica Prison, who already have three established, fungible and selectable routine clinics, 9-11 a.m., 1-3 p.m. and 7-9 p.m., Monday through Friday, then created a new totally redundant, routine clinic from 10:00 a.m. - 4:00 p.m., that was never before nor has never since been utilized, that **even an eight year old child** would recognize was done to preclude Law School attendance by the Black physician, a switch that two arbitrators have held creates a **presumption** that the switch in clinic schedules was malicious and punitive, that such a switch in clinic schedule has never been imposed on a white physician, who is now on probation by the Board of Regents and fined $1,000 by the New York State Department of Health for causing the death of a patient, and that that fact is not a discredit to the New York Department of Correctional Services, or the Nation, whereas the Black physician's decision, based on a well-experienced

and ***informed judgment*** about not initiating CPR and protecting that untrained white or any color crew, is considered a discredit to the New York State Department of Correctional Services, rather than a ***very wise choice.***

Come, come now Bob, listen to this Black Solomon. Even you are now liable under 42 U.S.C. §1986, that big fishhook conspiracy statute, that pulls in not only the racist schools of little fishies but all the racist biggie school masters themselves as well. Sorry Charlie. Better find yourself a good constitutional lawyer Bob. Don't depend on disciplinary rule violator, William D. Maldovan, Esq., for your defense!

2. Whether a public employee has a due process or equal protection right to a work schedule which would accommodate full-time employment and full-time Law School attendance?

Petitioner's Answer

Bob, we need the best educated minds that even ***money can't buy***. Our nation needs competent minds, that are independent, unlike your crew of peer pressured racists, who've spent many hours and thousands of dollars, belonging to the People of the State of New York, making that asinine brief that you prepared in defense of white supremacy for the white racist Appellees.

If a contract allows or provides for flexibility in a routine clinic schedule Bob, it wouldn't matter, in keeping with Lochnerism, what the Black physician did with his time. It is his **First, Fifth** an **Fourteenth Amendment** right! He could go to school or sail!

Moreover, Bob, an employer has a fiduciary obligation to improve the quality of our work force, as a State and as a Nation. An employer, and particularly a State employer should not take deliberate, malicious, and even criminal steps to thwart the intellectual achievements, a Black doctor or a white pauper.

Furthermore, Bob, even your Assistant Attorney General, in violation of Disciplinary Rules, is involved in the racist conspiracy to create and implement those ***"adverse employment decisions"*** that you now wouldn't have to be defending New York State ***and yourself*** against, if you had followed that wonderful Constitution of ours, particularly in the "Liberal" North.

Striking up symbolic liberal poses with your articulate legal publication in February 1989's New York State Bar Journal, praising the U.S. Constitution and the venerable Attorney General's office going back to Bach, the Baroque and Burr, was very cute, Bob.

It no doubt was published at this very particular time to help camouflage your KKK-heart & soul, in a liberal conspiracy with the editors to cover-up Watergate Style, the white supremacy atrocities being perpetrated against a Black man by you and your Buffalo Regional KKK(AG)B office across the street from your fellow racist co-conspirator, Judge John T. Curtin.

Atrocities that you so very well have known about for three long years, which were being committed against a Black doctor trying to exercise his Institutional Practice Plan contract rights to select in a most ordinary way, a Law School compatible routine clinic work schedule at Attica prison.

Bob, you ain't foolin' nobody, so do the U.S. Constitution a favor and resign now, before certiorari is granted or failing that, before the more definitive declaration of the Beginning of the End of white supremacy and Institutionalized White Racism is proclaimed from Lenin's tomb, in the western portion of RED SQUARE, in the City of Black Redemption, from the whites and for World Peace, thanks to Gorbachev, not racist New York City or State, your home, but MOSCOW!

3. Whether plaintiff has demonstrated specific facts to support his allegations that defendants conspired to violate his civil rights?

Petitioner's answer

Now, now, Bob, do you really only talk to hear yourself talking? Did you see that prima facie evidence, the so-called overt–act–affidavit of your Assistant Attorney General A 47-49, supra, in furtherance of a conspiracy to cause the loss of a Property Interest worth $2 million? That ain't no petty larceny, Bob!

Here you have before you, a Black man, more educated than you and 245 odd million Americans whether Black or white, who is having to wage a war pro se, against the adverse employment effects of your racist, arbitrary and capricious New York State ***adverse employment decisions,*** in arbitration, in an administrative hearing, to save his license to practice medicine in New York State and in this federal action all the way to the United States Supreme Court, to protect his constitutionally protected property and liberty interest, with the kind of operative facts that an eight year old child could recognize as a concerted effort, and you still don't think there is a conspiracy?

Bob, what we have here is, the NYS Department of Law, your department, the NYS Department of Correctional Services, the NYS Department of Health, the NYS Executive Department, the U.S. District and Circuit Courts all ***ganging up*** on one Black man, trying to become all that he can be, because that achievement, the white racist establishment knows, would undermine their racist pet conviction of Black inferiority, a concept so very necessary to the social, economic and political subjugation of the Black masses in America and around the World. Now liberal New York State is Burning, baby, is it Burning.

Bob, this Black doctor/lawyer is **fighting to get back in** Attica Prison. Most of the people in there as you very well know are **fighting to get back out**, as one of our great governors, Rockefeller, found out in September 1971.

There is now again in 1989, a fulminating and unsuppressible ***Riot for Freedom*** going on in Attica Prison, Bob, not in the Cell Blocks, where attempts are made to restrain the bodies of men, but this time, the ***Riot for Freedom*** is in the Administrative Block, where attempts are being made in a conspiracy, under color of law and under the banner of White supremacy and Institutionalized White Racism to restrain the mind of ***one Freedom-Loving*** Black doctor going to Law School, to become all that he can be, Bob.

The ***Riot for Freedom*** is against racist tyranny, a tyranny led by the Superintendent of Attica Prison, K. K. Kelly, the "Bull Connors" of Liberal New York State pretextual racism, who has been spraying water on this Black doctor's educational achievement attempts and illegally shuffling routine clinic schedules to scuttle Law School attendance, but that high peer pressured water only more voraciously wettens the ever increasing thirst of this Black man, for Freedom, for Truth, for Justice and the American notion of achievement, **"cause this Black man, this petitioner for Freedom, ain't gwine let nobody turn `em `round; he's gonna keep on to and `til victory!"**.

But Bob, you know that K.K. Kelly and his entourage of co-conspirators, should be moved from the Administrative Block to the Cell Blocks of Attica Prison where they really belong for acts of criminal complicity, forgery and fraud, the euphemistic so-called "State Law Claim", that Judge Curtin pendently threw out, under the Doctrine of White supremacy not ***Gibbs***. The whole entourage of conspirators have been and are being protected and shielded from the reaches of our mighty Constitution, under color of Law by you Bob, and the District and Circuit Court!

This mighty Constitutional War being waged on the grounds of the World's worst prison, is larger than life, Bob; it dwarfs the Water Gate and Iran-Contra Affairs combined; by a vast dimension its strategic and logistical importance approaches that of the Great Battle Field at Gettysburg. There, as you recall, Bob, the **Corporal Bondage** of Black people and the preservation of the Union were at issue.

But the current, fulminating Attica Prison Administrative Block, ***Riot-for-Freedom*** and Educational Stand-off, by one sole Black man against White Supremacy and Institutionalized White Racism, involves the far more important issue of **Black Mental Bondage** ... of a whole nation of Black people. It's all about true freedom, hallelujah!

After all is said and done, Bob, isn't that concept of Personal Liberty, really the only true essence of meaningful existence anywhere on this globe?

This Black man, petitioner for Freedom, shall keep on, keepin' on, and he shall indeed overcome! Soon the ***Hodge-is-Back*** victory news shall engulf the World because this Black man, as he goes on to the Supreme Court of the United States, is armed with the most powerful weapon against tyranny that the World has ever known:

That Enduring,
Constitution of United States of America!
Glory, Glory, Hallelujah!!!

February 28, 1989 Daniel R. Hodge, M.D., J. D.

The Peter Zenger Press

—

WHITE SUPREMACY
The Old News That's Still News:
BAD NEWS

—

Attica -vs- Gettysburg

"The world will most difinitively note and long remember what was said and done here at the Battlefield of Attica in 1989," Abraham Lincoln would no doubt say , if he analyzed the struggle of ***one*** Black man at Attica Prison against White Supremacy and its heinous and reprehensible progeny:

—

Institutionalized White Racism.

Let's now compare the two battle sites.

At the Gettysburg Battleground:

Upwards of 50,000 brothers died in one of the fiercest conflicts of internecine warfare that the modern world has ever known. Brother faught against brother, born of the same womb, from a mother country dedicated to the proposition that all men are created equal.

Biological equality is an unsubstantive convenient fiction: Can a genius be equally compared to an imbecil? Can a marathon runner be similarly compared to a cripple?

Legal equality is indeed a very noble and living reality, however, at least under the precepts of our enduring Constitution, if that document is supported in goodwill by the people.

—

At Issue in Gettysburg:

Black Corporal Bondage and the preservation of that more perfect union.

At the Attica Prison Battleground:

One ***sole***, Black man is currently engaged in the fiercest constitutional battle against **Black Mental Bondage** that this country has ever known: fighting against the Doctrine of Jefferson.

> "I advance it, therefore, as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments both of body and mind."

The Blow–by–Blow description follows:

Arbitration and Professional Misconduct Hearings:

The ***sole*** but complex issue framed by petitioner, pro se, at the **Arbitration Hearing** is:

Are theNew York State Department of Correctional Services management/respondent's

(a) so called ***adverse employment decisions,*** and repeated attempts to dismiss this grievant/petitioner from service,
(b) actually fraudulent, arbitrary, capricious, malicious and illegal acts,
(c) being carried out, under color of law and in a conspiracy with other New York State Departments, i.e., Department of Health, Department of Law and the Executive Chambers, and the Federal, District and Circuit Courts.
(d) using the pretextual guises of **"insubordination"** and **"unsatisfactory attendance practice"** charges in the first arbitration, and

(e) using the **"inappropriate medical management of an inmate"** and the **"being a discredit to the Department of Correctional Services"** charges, in the second arbitration,
(f) to retaliate against and punish the grievant/petitioner for filing a racial discrimination and disparate treatment suit in federal court and
(g) to deprive the petitioner of both his constitutionally protected **Property Interest** in his continued employment, and
(h) his constitutionally protected **Liberty Interest**

(1) in his reputation,

(2) his **right to contract** his services, under the Institutional Practice Plan, which by the Department of Correctional Services own description, in their post-hearing brief, after the previous arbitration, allows the physician to select ***how*** and ***when***, he will offer his services, using any of the three **fungible** and **selectable** clinics, at the Attica Correctional Facility,

(3) to engage in any of the common occupations of life,
(4) to acquire useful knowledge, and
(5) to enjoy those privileges essential to the orderly pursuit of happiness by free men?

Answer: to this ***sole***, but complexed "New York Burning" arbitration question:

A most disgraceful, heinous and reprehensible **YES!**

Administrative Hearings:

The New York State Department of Health's Administrative **"professional medical misconduct"** hearing is now being conducted for almost a year. The Department has rested its case. This pro se, petitioner, in the matter of Daniel R. Hodge, M.D., has demonstrated on the record, that the whole matter is a ridiculous, racist sham-of-a-proceeding being conducted under color of law, in a conspiracy with, among others, the Department of Correctional Services, who called in the Department of Health to "investigate" the inmate's death at Attica Correctional facility. The New York State Department of Health's

prosecutor Paul White, Esq., committed various atrocities in his quest "to regulate the ***standard of professional conduct***" of physicians, notably the petitioner.

Among other things, NYS Department of Health Prosecutor Paul White, Esq.:

(a) prepared a series of twenty **"substantive"** charges having absolutely no clinical merit, in a conspiracy with several hospitals, infra at page A 62 infra.

(b) removed a vital portion of a patient's chart, the emergency physician's record, then sequentially numbered the chart giving the impression of continuity. The patient had been seen by the petitioner at **Lake Shore Hospital** emergency room and given a diagnosis of Bronchitis/Asthma. Thirteen hours later she was given a diagnosis of Asthmatic Bronchitis by a **WCA Hospital** emergency room physician in Jamestown, New York. The charge against the petitioner of "failing to order a chest x-ray" and "missing a bronchopneumonia" have no clinical merit for the following reasons:

(1) Asthma is a heterogeneous disease, meaning it is highly variable, from person to person, both in severity of attacks and response to treatment. Asthma is treated empirically until an effective therapeutic regimen is found.

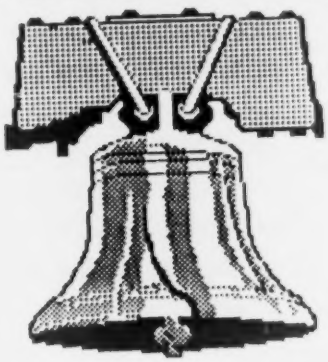
(2) Chest x-rays are not routinely ordered on asthmatics but are taken routinely upon admission. The patient's private physician admitted the patient and an admission chest x-ray revealed a minimal pneumonia which could be treated easily as an out-patient. The patient was treated for ten days in the hospital with IPPB (intermittent positive pressure breathing) which is no longer recommended for the treatment of Asthma, because it increases morbidity. She was indeed better off staying home. This petitioner feels that the modern approach to treatment of the sick is to keep them out of hospitals, if at all possible, unless there is a truly valid indication. That policy doesn't sit well with certain administrators and private physicians.

(c) Convinced the inept "disinterested" panel to order a psychiatric examination for the petitioner, as they typically did for political dissidents in the Soviet Union before Gorbachev, because the panel, based on information adduced at the investigative proceeding, "**had reason to believe that you may be impaired by mental disability.**" The panel had reviewed several political letters including the Cuomo affidavit and letter herein (A 40-46) and the statement in open court by the petitioner that Paul White, Esq., the New York State Department of Health prosecutor was "**a white scum-a-the-earth racist.**" The panel must have reasoned that any Black man taking such a Don Quixote stand against the wind mill of white supremacy and institutionalized white racism, in a white world, had to be crazy.

Petitioner is indeed crazy. Crazy about that enduring Constitution! And petitioner "**hears voices,**" ...the voices of the founding father's saying, "**We hold truths to be self-evident....that all men are created equal...**" Petitioner also hears that Liberty Bell!

It wasn't the alarm clock that woke this Black petitioner up this morning, nor yesterday as ***well.***

It was that old familiar, resonant sound, of that cracked-n'-troubled ***Liberty Bell!***



The Department of Correctional Services sends its sleuth, an employee of the Inspector General's office to "sit-in" on the administrative hearings, to report back with a blow-by-blow account of the **fruits of the conspiracy**, to the local management team at Attica Correctional Facility and the central office in Albany. How sweet the conspiracy is!

An arbitration victory, of course, would be rendered pyrrhically useless if petitioner lost his license to practice medicine in New York State.

Conspiracy under color of law is the modern way to perpetrate racist crimes against Blacks in the "Liberal North."

New York Burning, New York Burning
in 1989!

Petitioner is well experienced in the delivery of Emergency Health Care.

On the first day of work at Columbus Hospital in late March, 1986, the petitioner placed a transvenous cardiac pacemaker into the heart of an 18 year old white young man, who was submerged in the ice-cold Niagara River for more than one hour. Such victims have been known to be resuscitated and to recover without brain damage but only by using heart-lung machines and raising the body temperature gradually while treating complications. The petitioner knew that there was a very slim likelihood of success, even before working unsuccessfully but continuously on this victim for almost two hours. A few months later, another victim, this time of a suicidal hanging, eventhough brain-dead, was resuscitated by the petitioner at Buffalo Columbus Hospital. The patient was kept "alive" on a respirator for one week while attempts were made by this petitioner to have the family donate the kidneys and cornea, which they refused to do, as is their right.

While testifying as an expert witness for the plaintiff, at a hearing before Judge Norman J. Wolf, Jr., J.S.C., in Buffalo City Court, on June 2, 1987 this petitioner successfully resuscitated one of the jurors, who was a victim of a witnessed episode of ventricular fibrillation, an almost always, uniformly fatal heart rhythm. If it is witnessed, ven-

tricular fibrillation can be reversed by quick compressions of the chest, not so much of the heart itself as it is popularly believed by Cardio-Pulmonary Resuscitation (CPR) advocates, since the intra-thoracic pressure is more responsible for the blood flow output from the heart, whose valves are passively open anyway.

The definitive treatment for ventricular fibrillation is defibrillation using a direct electric current producing device called a defibrillator. The young juror was taken to Buffalo General Hospital, with this petitioner aboard the ambulance. The case was settled and this petitioner heard no word subsequently from the juror (not even a thank-you card, nor of course, neither was there a billing for service). There were unconfirmed reports that the juror, who was an athlete runner/jogger was using cocaine during the lunch break, and who unlike Lynn Bias and John Balucci, had a skillful physician, ready, willing and as it turned out, very able to give that juror a second chance at life.

These cases are significant because they attest to the skill of the petitioner with regard to Advanced Cardiac Life Support and other clinical skills, matters that are now at this very writing in controversy for nearly a year, both at arbitration in the Attica Correctional Facility, suspension without pay for the alleged mismanagement of a fibrillating inmate, and in a **"professional misconduct"** administrative hearing being conducted by the New York State Department of Health in a **conspiracy** with Buffalo Columbus Hospital, and Lake Shore Hospital, in Silver Springs, New York, Tri-County Memorial Hospital, in Gowanda, New York, W.C.A. Hospital, in Jamestown, New York and Attica Correctional Facility, in Attica, New York.

Too little or fragmentary knowledge is a dangerous thing, particularly in the hands of the politically powerful or those who control a substantial economic interest: It's called economic and political tyranny. At Lake Shore Hospital and at Buffalo Columbus Hospital there were numerous allegations eventually lodged by these powerful, against the petitioner relative to the so-called mismanagement of

various patients. The criticisms were medically or legally unsubstantiable, malicious and defamatory, not to mention that these criticisms were made by people who lacked the substantive knowledge to make an informed judgment about the matters in question and who misrepresented facts or relied on hearsay accounts. Nevertheless, the criticisms lead to revocation of the petitioner's hospital privileges without bylaw mandated fair hearings, as is required by the Joint Commission for the Accreditation of Hospitals.

TYSON & HODGE SCORE DECISIVE VICTORIES OVER WHITE SUPREMACY

Mike Tyson & Daniel Hodge, M.D., J.D. v. Thomas Jefferson, 1776 U.S. 1865 (1989)

At the World arena, just outside of Attica, the World's worst prison, the World looks on, as the 1989 World challenge of the ages is being waged by two Black men, Tyson & Hodge, against that ole' baggage of bigotry, which has held down the sons and daughters of slaves, the Black people of this Nation and the World, first, in ***Corporal Bondage*** until 1865, and from then until now, in various states of ***Mental Bondage,*** under the banner of white supremacy and its heinous and reprehensible progeny: **Institutionalized White Racism.**

Thomas Jefferson has been degrading the Black forefathers of these two healthy specimens of Black pride:

(1) Mike Tyson, being one of the World's Brawniest, and
(2) Daniel R. Hodge, M.D., J.D., one of the World's Brainiest

But eventhough Tyson & Hodge have clearly broken the Brawn-Brain Barrier of white supremacy racist mediocrity, forefather Thomas Jefferson and all his progeny with the exception of a mini-minority of NEW-people (Non-racist Enlightened White people; see **Blacks-for-Bush** A 33-35) have been shouting aloud from sea to shining sea, saying,

"I advance it therefore, as a suspicion only, that the Blacks whether originally a distinct race or made distinct by time and circumstance, are inferior to the whites in the endowments of both body and mind."

Most naturally, Blacks have been fighting back, hard,...but have been making only minor progress until Tyson & Hodge joined the **1989 challenge** to fight that white supremacy mental fixation disease, with which Jefferson and his progeny are chronically afflicted, and from which they absolutely refuse to extricate themselves, which of course, is the only way the disease can be eradicated.

The atmosphere was morbid and tense, as the crowds screamed, yelled and roared; the final round has just begun, just outside the Eternal Walls of Attica.

Jeff, whose white face had been gleaming a glaringly whiter than snow, white supremacy whiteness, in the earlier rounds of the bout, had grown ashen grey and haggered out, and he was truly weary of having to be slipin' and slidin,' like a white slimy snake in the hot noonday sun, just to barely dodge Black efforts to pin down the mediocrity of the disease for a final annihilation.

Now, Jeff also had this queasy feeling coming down on him, like the premonitory hyperanxiety and malaise that precedes unavoidable doom; he knew too well, that the inevitable end was near; the final round was, after all, finally here.

Jeff, now breathing heavily, was nervous and trembling with ague in the far corner of the ring. The Liberty Bell rings and Jeff pops-up like a cork, reaching the center of the battle square, jabbing senselessly as if shadow boxing in the dark.

Tyson, clearly impatient at the persistent defiance of the moment, throws a stiff right upper-cut to Jeff's jaw and ole' Jeff hits the canvas, belly up, with the thunderous crash of a lead cannon ball, Hallelujah! Jeff had no doubts in his hazy mind, that the thunder and lightening, now rocking his world, were the end result of the actions of those superior body endowments of a Black Michael Tyson, not to mention Tyson's superior mind, which with the speed of a modern computer calculated in microseconds, perhaps even nanoseconds, when, where, how, and how much force to apply to Jeff's jaw.

The built-in mechanism, that the force used by Tyson equals the product of the mass of his mighty fists times the acceleration generated, was effectuated, even though Tyson, moving so naturally was not aware of that scientific formula, which his Black brother Hodge, a former chemist, now elaborates for the crowd.

Then Hodge moonwalks over to ole' Jeff, who tries in vain to get up. Hodge also, like Tyson, showed no sympathy or remorse, because ole' Jeff was getting what he deserved, in a retributive wave of payback revenge. With a vengeance, Hodge whips out a piece of parchment from his left vest pocket...a parchment containing the most powerful weapon against tyranny...any tyranny...particularly white racist tyranny...that this world has ever known:

That 200-year-old, enduring
Constitution of the United States of America !

It seemed almost too cruel to use the ole' framer Jeff's very own work product, that enduring Constitution, so viciously against him, but there comes a time in life when the harvest is at hand, and reaping the fruits of the evil which Jeff had planted in the mediocre white mind, was a certain and inevitable harvest. The ole' white racist framer had been framing Black people with that inferiority rap for too long: now he's gettin' the big payback!

Hodge in a loud, resonant and forceful voice reads that power-house portion of the Constitution's Fourteenth Amendment which guarantees all Americans, life, liberty and property, and which provides for unabridged privileges, immunities, equal protection and due process of law, particularly, and more important and useful to Hodge:

That noble concept of
Scientific Substantive Due Process, Hallelujah!

That due process, that scientific due process, is not a way to straighten **Black people's hair**, to make it more acceptable to whites , but a way to straighten out **Black people's heads** and their lives, in a white world of pretextual ridiculous, aryan, raw white racism. It is a way to give Black people their personal liberty, true liberty...[***Allgeyer v. Louisiana***, 165 U.S. 578 (1897) and ***Rosenblatt v. Baer***, 383 U.S. 75 (1966); see footnote 17-18 on pages 16-17 of this petition], and a way for Black people to acquire ***and keep*** their property, all kinds of property, from that 40 acres and a mule, to buildings, to contracts, to corporations, to intellectual property, Hallelujah!.

With the graceful precision of a command performance, Hodge taps Jeff on the skull with the constitutional parchment and the M.D. parchment (doctor) and the J.D. parchment (lawyer) and Tyson mercilessly raps the golden belt around

Jeff's neck. Jeff is stunned, overwhelmed and rolls over face down in racist shame; now totally windless **Jeff finally shuts up!**

He can't degrade Black people's endowments of body and/or mind no moh! Jeff clearly has absolutely, unequivocal, substantive evidence, from the lives of Tyson & Hodge
that (1) his white supremacy notion of superiority is a malignant racist farce, and
that (2) white people's claim to superiority has to emanate from and rest on a whole lot more than just a white skin, straight hair, a pointy nose and no lips. Hallelujah!

Jeff and the white world now, know that **the magnetic kinship of white skin is far stronger than the respect for the law**, any law, even the Law of the Land..., that enduring Constitution.

Jeff and the white world now know also, that it takes skillful development and genuine achievement, whether of physical and/or mental endowments, to lay hold to a claim of superiority. Even then, the most valid method of measuring achievement is to gauge how much any person has embellished and improved on what was bequeathed genetically and biologically, the primary determinants. Eventhough social, economic and political circumstances, are presently in America, more controlling of the individual's life and fate, those factors are still artificial and secondary determinants, which cannot, under any circumstances, be allowed, in the final analysis, to impede the personal development and achievements, of the average American, in the first instance, regardless of color, creed, race, nationality, religion, etc.

When these secondary determinants (social, economic and political), have little or no effect on primary determinants (genetic and biological), it is then, and only then, that we can as a nation and a society, say with some measure of truthfulness, that each can indeed ***become all that he or she is capable of being!***

And the Walls of Eternity at Attica, came tumblin' down, like the Walls of ole' Jericho, as Hodge moonwalks through the pearly and rusty gates, holding *Old Glory*, high into the proud and spacious skies, all the way to any of his three freely ***selectable*** and totally ***fungible*** routine clinics, made in compliance with the contractual rights and provisions of his Institutional Practice Plan Agreement and in tandem with the rest of his multiple interests and his constitutionally guaranteed life, liberty and property. Hallelujah!

And all the birds in the Land of the Free, the truly Free (even the jailbirds), and in the Home of the Brave, the really Brave, began to sing a song of victory, echoing from sea to shining sea and beckoning over those amber waves of grain, that oh so sweet refrain:

Hodge is Back, Hodge is Back, Hodge is Back, AGAIN!!!!

Supreme Court, U.S.
FILED
APR 26 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1612

IN THE

Supreme Court of the United States

October Term, 1988

DANIEL R. HODGE, M.D.,

Petitioner,

against

WALTER R. KELLY, FREDERICK R. DOWNS, M.D., RICHARD LESTER, THOMAS A. COUGHLIN III, MARIO M. CUOMO, DEPARTMENT OF CORRECTIONAL SERVICES,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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Dated: April 24, 1989

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of Counsel

Question Presented.

Whether certiorari is warranted to review a summary judgment dismissal of an employment discrimination claim premised upon conclusory allegations of pretextual reasons for adverse employment decisions.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION.[1]

[1]The corrected petition, filed pursuant to a letter of the Clerk of this Court dated March 13, 1989, was received by respondents on April 3, 1989, but, pursuant to Supreme Court Rule 33.7, was docketed as of March 6, 1989, the date petitioner attempted to file the original petition.

Facts.

This suit involves the employment of petitioner, a black physician, at Attica Correctional Facility ("Attica"), a maximum security prison operated by the New York State Department of Correctional Services ("DOCS"), under the supervision of respondents Kelly and others (hereafter, "State Respondents").

Petitioner had been employed at Attica since 1983 (7, ¶ 1; 596, ¶ 15).[2] State respondents include the Prison Superintendent (Kelly), the Facility Health Services Director (Downs), the Facility Health Care Manager (Lester), the Commissioner of DOCS (Coughlin), the Governor of the State of New York (Cuomo), and the employer, DOCS (305, 566, 570, 587, 596-597, 750).

Petitioner was hired in August 1983 on a "full time" basis to deliver primary health care to inmates (596, ¶ 15). Initially, he was assigned to morning "call out", from 9:00 a.m. to 11:00 a.m., when inmates would be brought into the medical clinic (596, ¶ 15). Petitioner signed an "Institutional Practice Plan" ("IPP") which defined his employment and specified that not less than 28 hours (of the 40 for which he was compensated) must consist of "regularly scheduled on-site coverage (Monday through Friday)" (152, *see* 150-152). The IPP set the total number of work hours, but it did *not* specify *when* the hours would be worked (152, 310). Managment at Attica set the work schedules of physicians (41, 48, 49-50, 51, 53, 154, 155, 156, 158-159, 165, 167, 168, 169, 172, 176-177, 180, 181, 305).

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[2]References to numerals in parentheses are to the Appendix at the Second Circuit in *Hodge v. Kelly,* No. 88-7657. References to "App, A-1", etc., refer to the Appendix to the Petition for Certiorari.

After petitioner had been employed at Attica on a full-time basis for two years, he decided to matriculate simultaneously as a full-time law student (596, ¶ 16). Initially, Attica accommodated his law school endeavors by allowing him to change his work schedule (164). Respondent Downs switched schedules with petitioner, so that petitioner would conduct the afternoon clinic and Downs would operate the morning clinic previously run by petitioner (164). This accommodation to petitioner was accomplished by a simple memorandum, without any need for a modification of the IPP (164).

While Attica attempted to accommodate petitioner's scheduling preferences, the prison could only do so if it would not compromise the medical needs of the inmates, since there were only two physicians (Dr. Downs and petitioner), and one physician's assistant, on staff (157-158; 307, ¶ 12).

To impress upon petitioner the importance which management placed on punctuality for petitioner's attendance at the inmate clinics, respondent Lester sent petitioner a detailed memo on the subject of timely attendance when the schedules were changed to accommodate petitioner (156).

Thereafter, petitioner was frequently tardy, depriving inmates of medical care, inconveniencing prison staff, and creating security concerns (158-159). As of August 1985, after those episodes of tardiness and failure to keep to the assigned clinic hours, petitioner received adverse written performance evaluations (191, 647-649). Management documented petitioner's unsatisfactory performance in writing (194).

To prevent future disruptions of scheduling medical services, management asked petitioner to commit himself to work a specific, definite work schedule (167). Petitioner resisted those overtures and instead issued ultimatums as to hours he would work so as to facilitate his full-time law student status (168). Management declined to accept petitioner's proposal, because it would have resulted in evening hours for clinics when support staff (nurses, pharmacists, X-ray technicians) were not scheduled for work (168, 182). Management explained to petitioner that the whole prison could not alter its schedule just to suit his desires simultaneously to pursue full-time employment and full-time law school attendance (182).

Thereafter, petitioner reluctantly promised to work five days a week in the afternoons, but he refused to sign an IPP to that effect (170, 172).

On February 14, 1986, Attica changed petitioner's schedule to morning hours (176). Respondent Kelly advised petitioner that no physician at Attica had *ever* been scheduled for evening hours (176).[3]

Subsequently, petitioner took unauthorized absences from the prison to file legal papers to commence his employment discrimination lawsuit (219, 330, 348-349, 622). As a consequence of his unauthorized leaves, medical appointments for inmates were cancelled (623).

On March 4, 1986, petitioner was suspended without pay (353). A "Notice of Discipline", which proposed a

[3]Petitioner's claim that the other staff physician (respondent Downs) received preferential scheduling is without merit. Unlike petitioner, respondent Downs was "on call" 24 hours a day for emergency duty at Attica (306-308, 310). Downs was not required to be in the prison all of those hours, as long as he was readily available on short notice (306-308, 310).

penalty of dismissal from employment, alleged petitioner's insubordinate behavior for failure to submit an acceptable IPP (351-352). The disciplinary notice also alleged unsatisfactory attendance and specified that petitioner's continued failure to report for duty caused apprehension and unrest among inmates (352-353).

Petitioner pursued his administrative remedy under the collective bargaining agreement (353, 208). An arbitrator, after evidentiary hearings, found that petitioner was guilty of unsatisfactory attendance practices (233). The arbitrator reduced the penalty to a six-month suspension without pay (233). The arbitrator also found that the State had violated the collective bargaining agreement by changing petitioner's hours because of his failure to submit an acceptable IPP (233). The State was directed to reinstate petitioner with back pay minus the six-month loss of salary penalty (233). DOCS complied with the arbitrator's award forthwith (264).

Upon petitioner's return to work, he was reinstated to his afternoon work schedule (49). Security officials at Attica advised petitioner he would be expected strictly to adhere to his assigned work hours (41, 50, 627).

Within the next month, petitioner was frequently late for work (184-185). He also abused xerox privileges by copying materials unrelated to prison work (367-368). Petitioner xeroxed law school papers at DOCS expense, and he declared that Attica management had no authority to prevent him from doing so (370).

On February 11, 1987, First Deputy Superintendent Richardson met with petitioner and his union representative (51). Richardson formally ordered petitioner's work

schedule changed to 10:00 a.m. to 4:00 p.m. (51, 110, 334). Richardson explained this scheduling change as follows:

> "Your on-site work schedule is being changed to increase the amount of time you are accessible to the inmates concurrent with the time ancillary services are available to you. This will also increase the time you will be available for consult [*sic*] with the majority of our medical staff" (51, 180).

Subsequently, petitioner was tardy on numerous occasions—in material, significant respects, e.g., 35 minutes, 40 minutes, 30 minutes, 65 minutes, 50 minutes, etc. (186, 187, 625). Attica management tried to counsel petitioner about his chronic tardiness (356-358). Petitioner received detailed confirmatory memoranda documenting this counselling (356-357). He was warned that the prison must run on schedule and that tardiness for inmate medical clinics disrupted the entire facility and agitated inmates who have a right to receive medical care (356). Petitioner's response, documented in written memoranda, was his statement that "it's tough if you are late" (357). Despite those warnings, he continued to be tardy (188).

Thereafter, events unrelated to tardiness led to termination of petitioner's employment (717-718, 735-737). An inmate in cardiac arrest was brought to petitioner for emergency care, but petitioner refused to perform cardiopulmonary resuscitation on him (717-718, 735-737). The inmate died and petitioner was fired for his refusal to treat the inmate (346-347, 550-551, 717-718, 735-737, 752-753). Petitioner commenced a second (still pending) arbitration to contest the propriety of that disciplinary action (713, 748-749).

Decisions Below.

Respondents moved to dismiss the complaint pursuant to Rule 12(b)(6), F. R. Civ. P. (56-61, 285-290), but after notice to petitioner (738-741), the court received affidavits and converted the motion into one for summary judgment pursuant to Rule 56, F. R. Civ. P. (738-741, 772). The court granted defendants' motion for summary judgment in a written decision (App., A-3—A-11). The crux of the court's decision was as follows (App., A-8—A-9):

> "The court finds that plaintiff has not produced, nor would he be able to produce, sufficient evidence to show either directly or indirectly that the DOCS' stated reasons for discharging him, i.e., failure to submit an acceptable IPP, absence from work without leave, late arrival at work, and leaving assigned post without permission (see Appendix A, pp. 2-3, attached to Item 12), were merely a pretext for discrimination. These stated grounds for the actions taken by the DOCS are not in dispute, and are amply supported in the affidavits and exhibits submitted to the court. While plaintiff's pleadings and affidavits are replete with allegations of discrimination, such conclusory statements are insufficient to satisfy the requirements of Rule 56. Meiri, 759 F.2d at 998; Zahorik v. Cornell University, 729 F.2d 85, 94 (2d Cir. 1984)."

The Court of Appeals for the Second Circuit affirmed "for substantially the reasons stated by the district court" (App., A-2).

ARGUMENT.

The writ should be denied.

The courts below correctly held that petitioner's conclusory allegations of discrimination were insufficient to establish a valid claim for relief. *See,* e.g., *Meiri v. Dacon,* 759 F2d 989, 997-998 (2d Cir.), *cert. denied,* 474 US 829 (1985); *Clements v. County* of Nassau, 835 F2d 1000, 1005 (2d Cir. 1987); *see generally, Anderson v. Liberty Lobby, Inc.*, 477 US 242 (1986); *Celotex Corp. v. Catrett,* 477 US 317 (1986). Mere conclusions of pretextual employment action, do not suffice to rebut an employer's legitimate reasons for adverse employment actions. *Smith v. American Express Co.*, 853 F2d 151, 155 (2d Cir. 1988); *Anderson,* 477 US at 248-249. In any event, since legitimate security and scheduling reasons existed here (*see Dean v. Coughlin,* 804 F2d 207, 209, 213-214 [2d Cir. 1986]), even if there was any substance whatsoever to petitioner's wild allegations, the judgment should be affirmed under the "dual motivation" line of reasoning. *Mt. Healthy City School Dist. v. Doyle,* 429 US 274, 285-286 (1977) (if an employer would have taken the same action anyway for other, legitimate reasons, plaintiff has not established the requisite "causation" linking the allegedly improper action with the adverse employment decision); *Board of Trustees of Keene State College v. Sweeney,* 439 US 24, 25 & n 2 (1978) (employer does not have to prove the absence of a discriminatory motive, but instead, only evidence of legitimate nondiscriminatory reasons).

The chronic tardiness of one of two physicians at a maximum security prison (158, 165, 184-186, 258-260) is more than ample justification for the adverse employment action taken against petitioner. There is no merit to his petition for a writ of certiorari.

CONCLUSION.

The writ should be denied.

Dated: Albany, New York
April 24, 1989

Respectfully submitted,

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